

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 4

**INQUIRY INTO THE MANAGEMENT OF
SYDNEY HARBOUR FORESHORE AUTHORITY**

At Sydney on Monday 21 February 2005

The Committee met at 1.15 p.m.

PRESENT

The Hon. J. A. Gardiner (Chair)

The Hon. J. C. Burnswoods

The Hon. A. Catanzariti

The Hon. D. C. Clarke

The Hon. K. F. Griffin

Ms S. P. Hale

The Hon. D. E. Oldfield

The Hon. E. M. Roozendaal

CHAIR: Welcome to the second public hearing of General Purpose Standing Committee No. 4, inquiring into the management of Sydney Harbour Foreshore Authority. The transcript from Friday's hearing has been posted on the Committee's web site. With regard to media broadcasting, the Committee previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the broadcasting guidelines are available from the table by the door. In reporting Committee proceedings, the media must take responsibility for what they publish, including any interpretation placed on evidence before the Committee. In accordance with these guidelines, while members of the Committee and witnesses may be filmed or recorded, people in the public gallery should not be the primary focus of footage or photographs.

Under the standing orders of the Legislative Council, evidence and documents presented to the Committee that have not been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by a Committee member or by any other person. So far as messages are concerned, the usual arrangements apply and I ask that mobile phones be turned off.

LISA de LEAU, Administration Manager, P O Box 410, Brighton-le-Sands, and

Professor PAUL ADAM, Associate Professor, School of Biological, Earth and Environmental Sciences, University of New South Wales, affirmed and examined:

CHAIR: Ms de Leau, in what capacity are you appearing before the Committee?

Ms de LEAU: I am appearing as a private citizen, but I would like to declare that I am a councillor on Rockdale City Council.

CHAIR: Are you conversant with the terms of reference of the inquiry?

Ms de LEAU: Yes, thank you.

CHAIR: Professor ADAM, in what capacity are you appearing before the Committee?

Professor ADAM: As President of the Coastal Wetlands Society and as a member of Rockdale Wetlands Preservation Society.

CHAIR: Are you conversant with the terms of reference of the inquiry?

Professor ADAM: Yes.

CHAIR: If either of you should consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request.

CHAIR: Professor Adam, do you wish to make an opening statement to the Committee?

Professor ADAM: The concerns I have from both societies I represent refer particularly to the development known as Cooks Cove, which has been promoted by SHFA—actually Cooks Cove Development Corporation, it being difficult to work out the relationship between the two bodies. This is a development proposal, the origin of and justification for which is obscure, and which potentially has very substantial impacts on the natural and social environment.

CHAIR: Ms de Leau, would you like to similarly make a brief opening statement?

Ms de LEAU: Thank you. I just want to give a little background into the Cooks Cove proposed development. It is a 100 hectare site, immediately to the south-west of Sydney airport in the local government area of Rockdale. It includes 21 hectares of trade and technology and 63 hectares of private golf course. The site is at the top end of the Rockdale recreation and wetlands corridor, and that corridor represents approximately 50 per cent of Rockdale's open space. The site is also within

walking distance of north Arncliffe and the emerging suburb of Wolli Creek, with about 8,000 residents due to occupy that area.

The State Regional Environmental Plan No. 33 and the Master Plan were gazetted in 2004. Of interest to note is the mixed ownership of this particular site—Rockdale City Council, the Department of Planning, Sydney Water, the Roads and Traffic Authority and Kogarah Golf Course. I also want to outline how I see the relationship of this site with the Sydney Harbour Foreshore Authority [SHFA]. In 2001 SHFA established the Cooks Cove Development Corporation, which then appointed SHFA as the project manager or agent. However, all Council business papers have continued to refer to SHFA as being the body that they were undertaking negotiations with.

Our local Rockdale MP, Mr Frank Sartor, at the time sat on both the SHFA and Cooks Cove Development Corporation boards. However, he resigned in 2002 when it was announced that he would be the Labor candidate for Rockdale. In 2003 Rockdale City Council expressed its concerns about the negotiations with SHFA and appointed an independent negotiator to broker a better deal. I want to point to the level of concern in the community. That can be demonstrated by the more than 2,600 letters of objection that were lodged when the draft regional environmental [REP] plan and the master plan were on exhibition. That closed in March 2002. An interim green ban was imposed by the Construction, Forestry, Mining and Engineering Union in March 2002. In March 2003 there were 1,200 survey responses, 98 per cent of which showed opposition to the Cooks Cove project. I wanted to demonstrate that there is quite a high level of concern in the community and part of that concern is about the lack of transparency in the planning process around the Cooks Cove development. Thank you.

CHAIR: Thank you very much. Would you tell the Committee what the current situation is, bearing in mind that this Committee invited submissions last year but, because of the pressure of other inquiries, commenced this inquiry only in the last few days. Would you provide a summary of what is happening at the moment?

Ms de LEAU: The quick summary would be: not very much. Up until the State election 2003, certainly from a local newspaper point of view, with things being generated in our local community there was quite a bit of talk about the project. But that quietened down around late 2002 and pretty much since that time the only major announcements we have had were the two plans being gazetted. That was in June 2004. We are still waiting on information of the wetlands master plan and the other associated master plan being put out for exhibition and public comment.

CHAIR: Is that within the normal expected timetable for such master plans to appear? Have had been drawn out or is it roughly on time?

Ms de LEAU: I can only speak personally, but my impression would be that it has been drawn out. Particularly with the associated master plans that will detail how the wetlands are going to be managed—because that is an area of great concern that has emerged in the letters of objection can be continuing responses coming from the community. One of those wetlands is going to become a water feature in the golf course. Yet we have signed treaties with China and Japan as being a sensitive habitat for migratory birds and we do not have the new master plan in order to have public comment. It just seems that nothing really is progressing but there does tend to be a feeling that something may come up without appropriate notice.

CHAIR: Would you agree with that, Professor Adam?

Professor ADAM: There are a couple of points I would like to make in relation to that. Firstly, that the draft regional environmental plan and the draft master plan were originally placed on display a long time ago and then everything seemed to disappear into a black hole. We were somewhat surprised that the Minister announced on Friday, 25 June the completion of the REP and the master plan after this inquiry had been called. Given the lengthy gap we thought that was somewhat surprising.

In relation to what Ms de Leau has said about other plans, certainly the regional environmental plan [REP] requires that plans be prepared for wetland management, contamination and some other issues. It is not clear to us from reading the REP that those will be master plans

available for public comment, and that is a concern. It is not at all clear. Plans are to be prepared but it is not clear that there will be any opportunity for public input on them.

The Hon. GREG PEARCE: Can I just clarify a couple of things? I am looking at the Cooks Cove Development Corporation annual report for 2004. In the statement by the chairman it says, "This year the major achievements have been the gazettal of the Sydney regional environmental plan No. 33 and the adoption of the Cooks Cove master plan". They think they have had some major achievements in that year. What was the relationship with Harrington, because I notice that less than a month after those plans were approved Harrington actually pulled out, on 16 July 2004?

Professor ADAM: This is an issue which is somewhat clouded in mystery. Trafalgar, which then changed its name to Harrington, was the development company associated with, as far as I understand, the golf course but Trafalgar funded and directed the environmental study that was associated with the master plan. There was no independent environmental study associated with the REP but there was an environmental study associated with the master plan that had been produced for Trafalgar.

The Hon. GREG PEARCE: As I understand it, the master plan and the REP were both exhibited at the same time?

Professor ADAM: Yes.

The Hon. GREG PEARCE: The REP was gazetted on 25 June and the master plan was adopted by the Minister on 29 June. I would have thought that in the normal course you would prepare a master plan after the REP has been gazetted. You do not do them both at the same time. It seems to me that it was jumping the gun on this occasion?

Professor ADAM: That was a concern to us when we made our submissions because the master plan was predicated on particular outcomes of the REP process and yet, of course, there could be no guarantee that the draft REP would be the same when it became the final document, so when we made our submissions on those documents, that was one of the major concerns; that it did not seem logical. It seemed logical that there had to be a progression because you could not really prepare the master plan until you knew what the rules were and they were to be established by the REP, so to have the two simultaneously displayed was of great concern.

The Hon. GREG PEARCE: It is pretty clear that the whole thing was predetermined. Sydney Harbour Foreshore Authority [SHFA] has had the REP prepared and done the master plan, put them up the consultation, ignored the consultation and the Minister just goes bang! bang and makes both of them.

Professor ADAM: That, I think, is a very widespread view amongst the community, yes.

The Hon. GREG PEARCE: It seems to be pretty clear from here. What I do not understand is why Harrington pulled out the next month.

Professor ADAM: Neither do we.

The Hon. GREG PEARCE: No clue?

Professor ADAM: No. And we find it strange that subsequently it is the golf course that has been taking steps to appoint a new developer, which has now taken place. We find it odd that for a development that affects large areas of public land the preferred developer has apparently been chosen by a third party without any obvious tendering process or involvement of government, at least on the face of it.

The Hon. GREG PEARCE: The whole thing is pretty curious, is it not? The confusion between the Cooks Cove Development Corporation and SHFA, according to the report, "Cooks Cove Development Corporation is established under the Growth Centres (Development Corporations) Act 1974", whatever all that means, and it has power to enter arrangements and so on. It has appointed SHFA as its agent to manage the project, but the people who are on the board of Cooks Cove

Development Corporation are the same people who are on SHFA. SHFA, being the harbour foreshore authority, takes over this thing at Cooks River—

Professor ADAM: Which is not in the harbour.

The Hon. GREG PEARCE: It prepares the REP and the master plan, skips them through, and the Minister signs it all. It is very curious. In relation to your concern about the wetlands, again it says that the master plan contains a series of design objectives and guidelines which developers are required to meet in the course of preparing a development proposal. So, it does not actually talk about any plans or anything other than objectives and guidelines for the wetlands?

Professor ADAM: Yes, but there is a requirement in the REP that before any works take place that there is a wetland management plan but it is not at all clear that there will be any public involvement in commenting on or influencing that plan.

The Hon. GREG PEARCE: I would have thought it is fairly clear that there will not be, the way it has been done so far. From Rockdale council's point of view—and I know you are not here speaking for Rockdale council, but what is the council's view on how much money this project is going to take if it goes forward, how long will it take and so on?

Ms de LEAU: A view on how much money is involved I probably do not have a lot of detail on. I was elected to Rockdale council in March 2004. Since that time we have had one confidential session in council and one informal briefing session, which was also held in confidence, but it did not give a great deal of information. Of the 15 councillors sitting on the council at the moment, nine are on the council for the first time this term so nine of us have not been involved in the planning of this project to date and at the information session the independent negotiator that was contracted by council did make the comment that he was surprised more information had not been forthcoming to the new council to give them more background of what had happened previously.

Prior to being elected to council I attended—for about two years I went along to council meetings and sat in the back of the chamber in the public gallery. For quite a while, it was a period of about six months when the Cooks Cove project regularly appeared on the business papers and council would go into confidential session, so they were issues at the time of the lack of transparency or a lack of sharing information with the community, but I was not part of those discussions so I cannot comment on why that took place.

The Hon. GREG PEARCE: Professor Adam, can you give us any enlightenment on the cost and time frame for this?

Professor ADAM: No.

The Hon. GREG PEARCE: The best I can gather from the report is the aim, which is "the project aims to distinguish itself as an example of how best to combine social, economic and environmental elements in a way that creates a leading edge development for the 21st century and also leads to New South Wales securing a long-term competitive advantage within the Asia-Pacific region and providing a pathway to the world economy". It almost makes you want to rush out there and just get it done.

Ms de LEAU: If I can make one comment in relation to that. The site is adjacent to Sydney airport, the international terminal, just opposite the Cooks River. Since the master plan and the REP were presented mid last year, Sydney airport have announced that they will be building three high-rise towers within a stone's rival of Cooks Cove, so that does cast some doubt over the financial viability of that project, which would have a 200-room hotel and a number of other buildings that would be aiming to have office space for high-tech industries. It does say that there will be 10,000 operational jobs, and yet in neither the Sydney airport plan nor the Cooks Cove is there any mention of public transport infrastructure. One of the concerns reflected in the community is the sheer amount of traffic that will be generated on already overburden roads.

CHAIR: Do you know if the local member, Mr Sartor, has made any comments about the subject since he became the member?

Ms de LEAU: Not a great deal, apart from reiterating that he supports the proposal.

Ms SYLVIA HALE: Mr Robinson was a former chair of SHFA and what involvement did he have with the Cooks Cove redevelopment? Did he have any at all?

Ms de LEAU: Not that I am aware of.

Professor ADAM: He was certainly one of the people who were involved when the project was first announced. He was one of the public faces of the development proposal at the time that the draft REP and the draft master plan were released.

Ms SYLVIA HALE: In a supplementary submission from the foreshore authority, in answer to the question as to why the authority was involved in Cooks Cove, it says that the project was brought to the Government by Rockdale City Council in 1997 and initially the Department of State and Regional Development acted as the project proponent but they found that it was beyond the level of their expertise and they then proposed that it be handed over to the harbour foreshore authority—a proposal that was endorsed by the major issues and strategies committee of Cabinet. The Government decided that the foreshore authority, due to its role in Pyrmont-Ultimo, had the appropriate skills and resources to deliver this project but as the area was outside the authority's legislative boundary legal advice was that a development corporation should be established under the growth centres Act and that is how the Cooks Cove Development Authority came into being. Would you think that the history of the authority's activities in Pyrmont-Ultimo would make it a suitable agency to be the proponent of this project?

Professor ADAM: I would not like to comment on that not knowing the details of what happened in Pyrmont-Ultimo, but in relation to the chronology that is outlined there, the proposals which were originally floating around in 1997, and got some coverage at the time, were for fairly grandiose projects involving the north Barton Park area, including such wonderful concepts as ferry links to Sydney Harbour, but at no time when those concepts were being considered was there any public mention that the golf course and so on might be swept up into this project. That was something that came completely out of the blue when this grand project was announced, so it is not so much that they took over a project, or if they did, it was very much enlarged and different from what had previously been talked about.

Ms SYLVIA HALE: But if you were to compare Pyrmont-Ultimo with the proposed Cooks Cove site, you would say they were very different areas with very different sets of problems?

Professor ADAM: They were very different areas in terms of—yes, the Cooks Cove area in its various components is open space, be it public or private, so it is not redeveloping a built-up area. And, of course, the proposal is for a substantial private recreational facility as well at this industrial estate, so both the initial stage and the eventual outcome that is intended would be very different from what Pyrmont-Ultimo is.

Ms SYLVIA HALE: Also, the authority in its supplementary submission says that the foreshore authority acts as the project manager in day-to-day activities and in negotiations with Trafalgar Properties—now Harrington—and Harrington Properties had an exclusive development agreement with Kogarah Golf Club for its part of the site. A letter that I have from Kogarah Golf Club, dated 15 December, notes that Harrington has withdrawn from the project. It states:

To this end the board has been in discussion with interested developers and a major bank. The board has reviewed their presentations and expressions of interest and has now resolved to appoint John T. Boyd properties, trading as Boyd Company (Australia) Pty Ltd, or Boyd, to act as development manager and continue the process commenced by Harrington properties.

Earlier it states:

The Government has also indicated that there is no impediment to the club directly appointing a new development manager with whom the club can negotiate the most favourable outcome for its members.

In the history of your dealings with and knowledge of the site, does it appear that a process is emerging whereby there is no open tendering and that the outcome is predetermined by a particular developer or group or of developers?

Professor ADAM: Certainly that is what seems to have been happening. There has been a lack of openness.

Ms SYLVIA HALE: Has there ever been any public discussion or tendering? It is not just the golf course that is involved; other public lands are involved.

Ms de LEAU: That is right. The golf course is swapping 18 hectares of its freehold land—right now its course is on the boundary with Marsh Street—and it will then get a new course of 63 hectares. So that is all public land. It is swapping its freehold of 18 to get 63 in a new course with a 99-year lease. In correspondence that I have seen that was given to club members back in 2002—it was passed on to me by a club member—the club, in a sense, was put under the gun. It was told by Sydney Water that it would lose part of the current golf course because Sydney Water needed to do work on the ocean outfall pipe that was running directly through the course.

The Roads and Traffic Authority said that it was going to widen Marsh Street, which would have eaten into one of the other holes. So it was a combination of things. Pressure was coming from all sides and it all seemed to be happening at the same time. It was put down in writing that the course would not continue if the club did not accept the offer of moving over into the new facility that was going to be built for it. I understand that the developer at the time said that it would cover all those costs for the club to go over to that new course.

The Hon. DAVID OLDFIELD: Ms de Leau, in your opening statement you referred to different surveys. In particular, you referred to a 1,300-person survey, which had 98 per cent disapproval. Who conducted that survey?

Ms de LEAU: It was a local residents action group. It designed the survey, letterboxed it, put out a number of collection points and analysed the results.

The Hon. DAVID OLDFIELD: Did it collect 1,300 surveys, or did it put out 1,300?

Ms de LEAU: As a guess, it put out over 20,000. So it was about a 7 per cent return rate and 1,200 were returned. Of those 1,200, 98 per cent were in opposition to the project on the analysis of the questions answered.

The Hon. DAVID OLDFIELD: A sceptic would say that 18,800 people who received them were not opposed, but I understand what you are saying.

Ms de LEAU: Sure.

The Hon. DAVID OLDFIELD: How many of the 2,600 letters that were received were form letters?

Ms de LEAU: I could find out, but I would not be able to say immediately.

The Hon. DAVID OLDFIELD: Would you know roughly how many of them were from people who sat down and wrote the letters themselves?

Ms de LEAU: No, I am sorry.

Ms SYLVIA HALE: Harringtons originally achieved its preferred developer status because it was the one with whom the golf club entered into an arrangement. Returning to a previous point, we are looking here at a substantial development. Because one of the parties involved has a private arrangement with a developer, that project seems to have been given precedence above all others. There has been no public tendering process that would enable any public scrutiny to show whether that was the best or the most preferable outcome for the development of that area.

Ms de LEAU: I probably would agree with the way that you explained it.

Professor ADAM: And, importantly, one that however you tried to dress it up resulted in a substantial net loss of open space and an even larger loss of accessible public open space in Rockdale, in an area where open space is limited.

Ms SYLVIA HALE: Most of the holdings of the Sydney Harbour Foreshore Authority are located on the harbour, with the exception of the technology park, which has been transferred to the Redfern-Waterloo Authority. How appropriate do you think it is that the recommendations relating to an area in Botany Bay be facilitated by a body that has as its focus primarily Sydney Harbour?

Ms de LEAU: I would have to raise questions about the appropriateness of that connection. Speaking from a community point of view, the people of Rockdale are the ones who will lose out. Publicly accessible open space will be reduced from 60 hectares to 17 hectares, which is quite a dramatic loss. It will cost \$6.4 million to relocate the sporting facilities at this new technology park. The golf course is then going onto other sporting fields. Those sporting fields then have to move further down the recreation corridor. So the community of Rockdale, all the way from Arncliffe down to Sans Souci, will feel the impact. Every Saturday when families are trying to play cricket, rugby or any of the other sports, there will be congested streets in suburban areas and cramped sporting facilities. We are not gaining any open space; we are actually moving all these others further down the corridor.

Ms SYLVIA HALE: One could understand the argument that you needed a holistic approach for Sydney harbour, so that rather than piecemeal development you get fairly integrated development. However, since this site is well separated from Sydney Harbour, presumably that rationale would not hold. Could it be argued that the development of the site would be better administered by Rockdale and Kogarah councils, or by councils that would be affected by any major development on the site?

Ms de LEAU: I am still not sure whether Rockdale council would be the appropriate authority. The project is quite substantial. As I mentioned, \$6.4 million has been allocated just to move sporting facilities. It is contaminated land. It could be worked out in co-operation with neighbouring councils.

Ms SYLVIA HALE: Would it be better to go back to the drawing board and start looking for alternatives?

Ms de LEAU: Yes, it could well be.

Ms SYLVIA HALE: I suppose you cannot speak for Kogarah or even for Rockdale council, but would they be more inclined to do that in view of the proposed developments by Sydney airports?

Ms de LEAU: I would hope so because that is new information that was not there in the earlier planning stages.

Ms SYLVIA HALE: If it were to go back into the control of councils do you think that would allow for greater public involvement and participation in determining the outcome?

Ms de LEAU: Yes. I would say that there would have to be more opportunity for genuine community consultation and participation in those decision-making bodies if it were under the control of councils.

The Hon. KAYEE GRIFFIN: You refer in your submission to the loss of open space and damage to fragile wetland ecosystems. I understand that a technical environment reference group will be established, which will include NSW Fisheries and the National Parks and Wildlife Service, to provide expert advice on the wetlands plan. Would you still be concerned if that reference group were established? It seems to me that representatives on that group, which will include representatives from NSW Fisheries and the National Parks and Wildlife Service, would be vigilant in relation to the wetlands plan.

Ms de LEAU: I would hope so. I share that optimism that they would be vigilant. The concern that I expressed in my submission came from a comment made by our local member of Parliament, Mr Frank Sartor. At one stage he said that it did not matter that a wetland was going to be destroyed because it was man-made and, therefore, it did not really matter. That was contradictory to State Government information that no wetland should be destroyed and that they were all important to the ecosystem. I share that optimism and I hope that we have local representatives, including Dr Paul Adam, who has local expertise in the area.

The Hon. KAYEE GRIFFIN: You referred earlier to open space and to public accessibility. Will the present proposal open up more open space and make it more accessible to the public?

Ms de LEAU: It certainly is not opening up more open space. The information that comes through from SHFA and in the marketing documents refers to improving the quality of open space, particularly around the top end—the technology park area—where there will be some parks. There is a plan to open up a cycleway along the Cooks River. At the moment the cycleway runs up behind the wetlands, comes under the M5 East and swings around that way. One of the concerns I mentioned earlier related to the impact on other sporting facilities. In Bicentennial Park, which is located in the suburb of Kogarah, there is a soccer pitch, a children's playground and a small asphalt car park.

The soccer pitch has a lovely grass verge all the way round it and it is open space, so we can all walk there. My kids can run along there, fly kites, and all that sort of thing. The soccer club has to move from Barton Park up near the airport because that is where the golf club is to be relocated. It will then take that land at Bicentennial Park. It has signed an agreement with council and it has been promised facilities no less than it has now. That will mean a 20-metre cyclone fence around it. A new stadium will be built and there will be a doubling of the asphalt car park. That is an example of where open space is not publicly accessible open space.

The Hon. KAYEE GRIFFIN: Are you saying that it is not publicly accessible now, or that it will not be publicly accessible in the future?

Ms de LEAU: That is an example of where we currently have publicly accessible open space. On that example at Bicentennial Park, that will not be there.

The Hon. KAYEE GRIFFIN: I refer to the proposal at the moment. Will the proposal result in the dedication of approximately 70 per cent of the site to open space? Is that the option contained in the proposal?

Ms de LEAU: That would include the golf course, which again is not publicly accessible open space. It is a private golf course.

The Hon. KAYEE GRIFFIN: So you are saying that that is not correct?

Ms de LEAU: You would certainly call it open space. It is zoned open space but it is not publicly accessible open space.

The Hon. KAYEE GRIFFIN: As I understand it the foreshore site at the junction of Cooks River and Muddy Creek is used at present by Rockdale council as a storage yard. Under the master plan its proposed use is as a fully remediated foreshore park with a new pedestrian bridge over the creek to link with the park. Are you suggesting that is not a better result because of some of the changes that might occur under the proposal?

Ms de LEAU: It certainly sounds attractive. I am not aware of it being used as a storage facility. There was an incident about 18 months ago when council inadvertently dumped a whole lot of landfill on the reed beds in some of the wetlands and it was required to remove it, and remove it pretty quickly, or face a hefty fine.

I do not mean to disagree but I do not believe that it is storage at the moment. But anyone who would walk through that area at the moment could say that we do need to spend money on it. We need to get the mangroves out of it. They are in the wrong place and are choking some sensitive wetland areas that we have by enclosing one of those wetlands inside the golf course and not putting

in appropriate after zones. Dr Adam referred to that before—that we do not have the management plan for the wetlands to see what is proposed for buffer zones—and migratory birds are not going to go and sit in a water feature in a golf course, where they currently do now.

The Hon. KAYEE GRIFFIN: You also spoke about the fact that you went to council meetings for two years before you were elected to the Rockdale council, and that the matter of this proposal was dealt with in confidence then and you also referred to a couple of meetings since you have been a councillor.

Ms de LEAU: Yes.

The Hon. KAYEE GRIFFIN: Can you advise me of council's attitude and the reasons why they were doing things confidentially? What was the reason that the council moved to have that dealt with behind closed doors?

Ms de LEAU: I am sorry, I would probably be taking a guess. The majority of those meetings would have been dealing with the financial negotiations with SHFA so it would have been given as commercial-in-confidence because of the financial nature of the information.

The Hon. KAYEE GRIFFIN: You said that there have been a couple of confidential discussions that since you have been with the council.

Ms de LEAU: Yes.

The Hon. KAYEE GRIFFIN: Have they been council meetings?

Ms de LEAU: One was a council meeting. One was an information session for councillors.

The Hon. KAYEE GRIFFIN: So that the one that was a council meeting, what was the reason that that was dealt with confidentially?

Ms de LEAU: For the same reasons—we were talking about financials. It did not go into a lot of detail but it was in relation to the financial negotiations with SHFA.

The Hon. JAN BURNSWOODS: Professor Adam, I understand that you are a member of the New South Wales Government's Scientific Committee.

Professor ADAM: I was. I am not any more.

The Hon. JAN BURNSWOODS: When did you cease to be so?

Professor ADAM: On 31 December.

The Hon. JAN BURNSWOODS: So you would be pretty familiar with all the steps that happened after the REP master plan, the formal plans that have had to be drawn up, the technical environment reference group, the eight-part test and the species impact statement and also the involvement of the Federal Department of the Environment. I am just a bit puzzled that the submission that is signed by Ms O'Brien seems to ignore the fact that all of those steps follow the REP and the master plan.

Professor ADAM: The steps might follow, but the outcome is not guaranteed.

The Hon. JAN BURNSWOODS: But you would not guarantee it before you had done all those environmental and Scientific Committee checks.

Professor ADAM: No. The Scientific Committee would not be involved in those checks, but the threatened species matters, of which there are now more than there were at the time the master plan was prepared, are only one of sets of matters that have to be taken into consideration. The fact that something is listed on a pertinent area does not prevent development from occurring if the decision is made that, for social and economic reasons, those values outweigh the conservation values.

Despite all the publicity to the contrary, the number of developments in New South Wales that have actually been blocked by threatened species matters is very, very small.

The Hon. JAN BURNSWOODS: I did not of course refer only to threatened species but to numerous other aspects.

Professor ADAM: Yes, to those other matters. Although Ms de Leau just expressed some sort of optimism that officers from Fisheries and the former National Parks and Wildlife Service would be involved in the these committees, of course without knowing what those committees represent to work at, without in any way doubting the professionalism of the officers of those departments, again they might be heard, but would they be listened to? Would the broader public ever know that maybe the views of those departments have been overridden as part of this process? It is again not a process which necessarily guarantees an openness in so far as what members of the public get to hear.

The Hon. JAN BURNSWOODS: Well, if you have a technical and environment reference group which includes DIPNR, Fisheries, national parks, et cetera, and you have got the Federal Department of the Environment and so on and all of these processes are actually written into the steps that occur after the master plan, is it not a bit previous of you to be attacking the outcome when in fact we are only at the initial stage of these processes? You may not have written the submission. I know that.

Professor ADAM: No, but I mean I think the issue is the confidence of how much attention is going to be paid to the input from those directions, given that there is no right of veto from, if you like, the environmental and conservation side of this process. It is properly only one of the matters to be considered but I think in view of everything that has gone on in this process, it is not unreasonable to have some scepticism in advance that, when it comes to weighing up the various matters, perhaps not a huge amount of weight is going to be attached to this. Certainly if one read some of the initial proposals, which admittedly in some cases have stepped back a bit, some of the original proposals really demonstrate a very poor understanding of the issues involved.

For example, part of the site is the historic Chinese market gardens, and on the original plans that were put forward, that was to be occupied. The original proposal and the original documentation show that in fact it was to cover the Chinese market gardens with sand so that they were not physically, if you like, destroyed, but completely obscured. Subsequently the Heritage Office said that that was not appropriate, but the idea that it would even have been contemplated is some indication of the lack of real insight. The issue that Ms De Leau has raised with the so-called landing lights wetlands again highlights that. The plans, which admittedly are not necessarily the final plans of the golf course as originally put forward, would obliterate the landing lights and wetlands as part of the course.

The Hon. JAN BURNSWOODS: Nevertheless there are a lot of processes to go and there are a lot of different agencies, State Government and Federal government as well as local government. You would have to be something of a conspiracy theorist, would you not, to think that all of these things by all these bodies are going to be kept behind closed doors and done secretly?

Professor ADAM: But there is nothing—the concern is that there is nothing in the plans which actually specifically obligates a public involvement, role, or release of the information. Yes, as I say, I do not in any way deny the—

The Hon. JAN BURNSWOODS: So your only problem is the public involvement?

Professor ADAM: Of the public.

The Hon. JAN BURNSWOODS: You agree that all of these different government agencies at three levels of government are involved?

Professor ADAM: Yes, and I agree to the professionalism of the staff of those departments, with which I am familiar. But, as I say, there is no guarantee that if those departments raise serious

concerns they would be necessarily listened to or that we, as the poor old public, would ever know about it. So if that makes me paranoid and a conspiracy theorist, then so be it.

The Hon. JAN BURNSWOODS: Just one more thing, talking of being paranoid, your submission is totally wrong in describing SHFA as a consent authority. I know we spent some time on Friday going over these issues, but would you agree that in fact legally and in every other way, SHFA is not a consent authority, despite what you say in your submission?

Professor ADAM: Well, I would have to seek advice on that matter, but if that is—

The Hon. JAN BURNSWOODS: Do you want me to read you the relevant sections of the legislation, or do you want to take my word for it?

Professor ADAM: I would be prepared to take your word for it.

The Hon. JAN BURNSWOODS: Thank you. I have no further questions.

The Hon. DAVID OLDFIELD: You are a brave man.

The Hon. GREG PEARCE: You have not known her as long as we have.

CHAIR: I thank both of you for firstly your presentations on behalf of your various organisations and secondly for your time here today.

(The witnesses withdrew)

(Short adjournment)

ROBERT JOHN SENDT, Auditor-General, Audit Office of New South Wales, 1 Margaret Street Sydney, affirmed and examined, and

STEPHEN JAMES HORNE, Assistant Auditor-General, Audit Office of New South Wales, 1 Margaret Street, Sydney, sworn and examined:

CHAIR: It is in your capacity as Auditor-General that you appear before the Committee today?

Mr SENDT: It is.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr SENDT: I am.

CHAIR: You are appearing before us today in your capacity as Assistant Auditor-General?

Mr HORNE: I am.

CHAIR: You are also conversant with the terms of reference of this inquiry?

Mr HORNE: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be seen or heard only by the Committee, please indicate that fact and the Committee will consider your request. Would you like to start by making a brief statement to the Committee?

Mr SENDT: Yes, very brief. I assume that our appearance today stems from the performance audit report that was published by us in November 2003. In that report we looked at the processes by which agencies made decisions about the disposal of Sydney Harbour foreshore land and, in particular, the extent to which they were able to obtain guidance from vision, strategy, policy et cetera of the Government. We did not question any policy. We did not examine in any depth individual decisions that were made, it was really the extent to which agencies were able to make decisions in the context of strategy or other directions of government. Unless Mr Horne wants to make any further opening remarks, that is all I would like to say.

Mr HORNE: I have no further remarks.

CHAIR: In your report, which was completed in November 2003, the Sydney Harbour Foreshore Authority gave its response to your report. Do you have any comments you would like to make in relation to SHFA's response to your report?

Mr SENDT: We were somewhat surprised by the strength of the response. As is our usual practice, we have considerable discussions with the organisation or organisations involved during the course of the audit. In the discussions we had with SHFA during the course of our audit, which was only one of many organisations we spoke to, there seemed to be general acceptance of the view we were putting forward that there was our lack of overarching strategy that provided enough guidance to agencies in making their decision. As you can see, the response from the CEO of SHFA is quite critical of our report and, we believe, undeservedly so.

CHAIR: Does the Audit Office have a view as to whether the lack of an overarching framework for governance and disposal of, et cetera, in relation to foreshore land, is still the state of play?

Mr SENDT: We have not conducted any follow-up audit at this stage. At the time there was, and still is, visionary statements by the Government as to their views on what Sydney Harbour should be. We accepted that vision at the time, but our concern was that nothing was sitting below that to provide more concrete guidance and direction to agencies. We are aware of changes that were being

made around the time of our audit, such as the creation of the Department of Infrastructure, Planning and Natural Resources. Without having conducted any further work, we believe that is probably a step towards delivering a more cohesive strategy. But we have not done any detailed follow-up work, unless Mr Horne wants to add anything.

Mr HORNE: I just add that one of the comments given to us at the time we were finalising the audit was that the Metropolitan Strategy for Sydney, which was being considered at the time, would be a significant response to the issues we were raising. That is still under compilation and is not finished at this point. In the absence of that I do not think things would have changed significantly. There are still many documents out there purporting to be strategic. There are many plans. But I do not think the overarching concept that we had, similar to what exists for similar water ports overseas, is in place at this time.

CHAIR: Have you analysed how many, if any, of your recommendations have been taken up by the Government?

Mr HORNE: We have not yet conducted a formal follow-up audit. We do that after a period of time has elapsed. But probably not enough time has elapsed for us to do that. However, we carry out a follow-up request to each of the agencies involved to give us a more specific response to each of the recommendations. That is a normal part of our finalising each audit. We did that and responses we got back to those specific recommendations were consistent with the general responses that you see in the report indicating that, at best, the agencies were taking the matters under consideration as part of the future restructure and future documents yet to be developed. I would not have said that I had seen any specific action come from that yet.

The Hon. GREG PEARCE: I must admit, I was a bit like the Chair: I felt this was quite good. It sounded fairly sensible. I started at the beginning of it and read my way through it. I was really quite astonished when I saw the response of the Sydney Harbour Foreshore Authority and, to a lesser extent, the response from the Department of Planning. I would like you to give us your views on the responses from SHFA. I am looking at page 57, SHFA's response to the executive summary, which states that the opinions and findings in the report are flawed. The potential value of the report is diminished by the failure to understand the new administrative arrangements inherent in the creation of the Department of Infrastructure, Planning and Natural Resources. What is your view on the response and how did you cover that in the report?

Mr HORNE: We were certainly quite aware of the new ministerial arrangements, but at the time of our audit and certainly by the time of the report those new structures had not led to any change, the introduction of any plan for the harbour or any real change to the Government's arrangements and the division of responsibilities between the very many organisations that have a role in Sydney Harbour foreshore land.

The Hon. GREG PEARCE: That multiplicity of organisations is one of the issues that comes out very strongly in the report. What would you recommend to streamline that or whatever you think should be done with those organisations?

Mr SENDT: I might leave that to Mr Horne in the first instance and perhaps come in with a comment following that.

Mr HORNE: We spent on a lot of time discussing with each relevant agency what we thought the problems were, and we tried to reflect them from the perspective of the people who were involved with coming into the system and looking at how it worked. It was very confusing. As you would expect, each of the agencies think that their role is entirely clear and they had no difficulty with it. But when we tried to mix it altogether it did not seem to gel quite as well as we would have liked. We went back to speak to them about that and explained what our views were, what people out there were saying to us and why it did not seem as well oiled as it might be and we started to discuss with them what we thought a solution to that sort of situation might be. We found no consensus among the agencies of what a solution to that would be. The measures that they put in themselves previously, such as the Sydney Harbour Executive, were regarded by all as okay but not brilliant and probably needing to be improved. But we could not find a consensus point at which everyone would agree on what needed to be done.

It was our tendency with something like that not to push one particular line of argument—this agency should get it over the other—not to anoint a winner, if you like rather to determine what were the underlying issues that needed to be clarified by recognising that there may be many ways that they could be achieved, to get agreement that that was the way forward and then to allow these so-called new structures with DIPNR and so forth to deal with that. They seemed happy to take that approach at the time. It was only when we subsequently got the response that they seemed to have a little bit of a change of heart. But rather than say this is the mechanism or that is the mechanism we tried to point to what were the problems with the existing mechanisms. Giving any one agency more power or getting rid of some or adding some more would not necessarily change it that much at all. They each have their own role to play legitimately. The bigger question was how that all worked together in a reasonably organised way with some clarity and some surety. It was those aspects that we were not sure went terribly well. To sum that up, we did not feel that the mechanisms in place at that time were adequate.

Mr SENDT: If I could add to that, the number of organisations is not a problem necessarily, it is the fact that all of them were not operating under the same belief in what the Government's intentions were because detailed guidance was not provided. This is not the only instance where this occurs. For example, we found similar issues when we looked at the clearing of native vegetation. Many players are involved with no clear responsibility, no clear ownership of the outcomes of the policy or strategy, and this was a situation that we found here: many players, each with their own view as to what the strategy was.

The Hon. GREG PEARCE: The third point further down that page is an allegation that you failed to understand the legislation governing the establishment of SHFA and its functions in relation to core land and surplus land held by other government agencies on the harbour foreshore.

Mr SENDT: I am not sure exactly what that criticism means.

The Hon. GREG PEARCE: I was not either.

Mr SENDT: I am not sure what we fail to understand. Perhaps Mr Horne can elaborate.

Mr HORNE: Only by the balance of the SHFA report where it purports that its legislation could be used to provide a governing structure. Our view was that that was not the case and that was not our decision to make in any event. The mechanisms existing under the SHFA legislation were one part of a very complex system. Certainly that did not give adequate governance overall from our core point of view, so we did not consider that matter was clear. The SHFA legislation was open to a very interesting interpretation by different parties, and we did not seek to sort that out. However, it was not clear to anyone that a governing structure was in place, whether it be the SHFA legislation or any other.

The Hon. GREG PEARCE: I assume you are familiar with the SHFA legislation, which has that dual ministerial approval process where the relevant Minister, in this case the Department of Planning, is able to give directions to SHFA.

Mr SENDT: I am not that familiar with the legislation. Mr Horne may be.

Mr HORNE: We did not audit the process of approvals and how matters are processed through so much. We were aware of the broad roles SHFA has and the powers in a general sense, but we did not seek to audit those.

The Hon. GREG PEARCE: You did not look at those?

Mr HORNE: No, the purpose was not so much to audit the processes within any one of the agencies. We easily could have looked at a local council in the same context. We wanted to see how they did it together. But we had some awareness of what their general roles were.

The Hon. GREG PEARCE: Did you look at the foreshore fund at all, the way that their funding is structured?

Mr HORNE: No, we only observed what the different sources of funds were and the purposes to which they were put to try to map out what all the different little pots were and how they were meant to fit together into a bigger picture. There were some funds that people will speak about that had existed for some time and had become dormant. A number of funds of the foreshore have come and gone, but in people's minds some of them still exist or serve certain purposes. But we looked a bit more closely at them again and it was not as clear as anyone had thought it was. Again, trying to illustrate our point that the clarity around what everyone is meant to be doing and how it is supposed to work is something that seems to be lacking here.

The Hon. GREG PEARCE: I will not go through all the failings of the report.

Mr SENDT: Alleged, Mr Pearce.

The Hon. GREG PEARCE: Alleged, of course. Do you have any comments on the recommendations of SHFA contained on the next page? It seems to be a bit confused about whether SHFA should be the all-powerful authority or whether that should be the Sydney Harbour executive.

Mr SENDT: Those recommendations are not for us to consider. Those were recommendations that SHFA should or could have put to the Government, and may have put to the Government. But—

The Hon. GREG PEARCE: Are those things that you will look at when you review progress since the early report?

Mr SENDT: We could. But, again, some of those are very much matters of Government policy. For example, reconstituting the Sydney Harbour executive, which is just an advisory body that does not have any power, is a matter for Government decision as to what the Government's arrangements should be. Our concern simply was that the Government's arrangements in place were not leading to best outcomes.

Mr HORNE: It was not apparent to me how those recommendations related to the matters we had raised. They seemed more to be matters that were currently on their "to do" list. That is fine; they are able to make whatever comment they want. But I could not see a direct connection with some of the issues that we had raised.

Ms SYLVIA HALE: Gentlemen, you indicated that there would be a follow-up audit at some stage. When would that be likely to occur?

Mr SENDT: We normally do follow-up audits within the range of 18 months to 3 years after we have completed an audit, although in some cases the Public Accounts Committee takes a follow-up role in respect of work we have done and may independently, hopefully in consultation, decide to conduct a follow-up review. But, given the nature of the subject matter of this, and the changes that had been mooted—such as the release of the metropolitan strategy—it is probably one that we would do later, rather than earlier, because I suspect that if we did it early, for example, in the next 3 to 6 months, we would not find much change.

Mr HORNE: When we complete an audit we look at the factors to be followed up, and then we look at what might be some key indicators as to when a good follow-up time would be. Given that one of the key responses here was the metropolitan strategy, until such time as the metropolitan strategy starts to take some shape and be implemented as a response to some of the matters we had raised, there would not be a lot to follow up.

Ms SYLVIA HALE: But, for example, we see major land releases taking place prior to the formulation of the metropolitan strategy, so I fear we might wait a long time before that takes effect. You have said that you did not audit the approvals process. Would you, in any subsequent follow-up audit, extend your inquiry to investigate that? One of the matters that a number of people have told the Committee about is that there is a perception of conflict of interest between the authority as a developer and yet the proponent of projects, and also as the authority that prepares the mast plans, and so forth, and also that the authority has claimed that it does not actually make any decisions, and all of

those are referred to the Minister. But, again, there is that perception of an extraordinary close relationship. Would that be the sort of thing that you would regard as relevant to audit?

Mr SENDT: It is something that we certainly could comment on, and there is comment in here about the dual role of SHFA. I am not sure that it is something that you can audit in the sense of going through reviewing an approval of a particular site, for example, and that audit disclosing a conflict of interest. The conflict of interest, if there is one, is in the basic structure of SHFA. I am not sure, as I said, that looking at an individual approval process would disclose anything more than that.

Ms SYLVIA HALE: I am not thinking of a specific individual. You point to the tensions between aspirational government policy and commercial realities. Is it appropriate for you to follow up those tensions and to see how they work themselves out?

Mr SENDT: It could well be that if we did a follow-up audit we would look to see whether those tensions still exist, or whether anything had changed in the government's framework to reduce those tensions, or whether roles had changed.

Ms SYLVIA HALE: Particularly with the guideline that you mention regarding the total asset management manual of 2000 about asset disposal and strategic planning, is that guideline still in force as far as you are concerned?

Mr SENDT: As far as I am aware, yes.

Ms SYLVIA HALE: So would that tension between the department, seeking to get the maximum return on the disposal of any assets and in the process putting to one side considerations of public good, such as public access or retention of public facilities, still very much exist?

Mr SENDT: That is a tension that could exist in any number of organisations that primarily have a social objective or a public purpose objective, but which hold assets that may be surplus to, or not required for, the delivery of their services. There is always that tension.

Ms SYLVIA HALE: A witness suggested to the inquiry that the public was brought in too late in the process before projects had been formulated, and suggested also that the approach adopted by the Sydney Harbour Federation Trust was a desirable one in terms of public involvement and consideration of projects, before they got to a stage of semi-finalisation. I note in your report that you refer to the Sydney Harbour Federation Trust in terms of the early identification of options and extensive consultation. Would you think that a feasible approach to adopt? Have you any evidence, or have you seen, that it works in relation to the federation trust?

Mr SENDT: Perhaps I could just say that I think the problem with public participation is that at the moment decisions are made on an individual proposal basis, and every time a decision needs to be made an interpretation of what the strategy might be has to be invented. In the absence of that strategy, the decision maker has to think: Well, how could this land best be used? If the public and others came in earlier, when the strategy was being formulated, I think it would give a better outcome because you could get public participation at the outset in deciding, for example, that particular areas would be developed as precincts for open space, or precincts for working harbour, or precincts for active or passive recreation, et cetera, and individual decisions about parcels of land within that could be made in that context. Then, people would be aware of, and could contribute earlier to, decisions about what that general area was intended for. In terms of the specifics of your question, Ms Hale, about the Sydney Harbour Federation Trust, Mr Horne might respond.

Mr HORNE: The federation trust's situation is somewhat simpler. It does not have quite the complications of disposal options that are being spoken about here. But we did look at the trust's process, and we were impressed by it. We thought the ability to explore a wide range of options in a fairly flexible way was very useful. It allowed more consideration of the possibilities than was the case in the system that was being used for State government properties. So we floated that idea and talked to a number of agencies about it. They were not really enthusiastic about our ideas on that one. They thought it would lead to things being grid-locked and to indecision because of the conflicting tensions of the different parties. We recognised that as an issue or a complication, but I do not think that is a reason not to do it. I think that is a problem to be managed and an issue to be worked through.

But when you sensibly look back at the possibilities, the current system is too project based. So it is only when someone comes along with a bright idea "Let's do this" that they then start from there, rather than look at it more broadly. If you are looking for the best outcomes, looking more broadly would be a reasonable thing to do. So we made a recommendation about that, and suggested that there needed to be some thinking done, perhaps borrowing some of the ideas from the federation trust as to how it goes about doing it.

Ms SYLVIA HALE: So is that project-based approach really antithetical to taking a holistic view, or at least tending to preclude it?

Mr HORNE: Well, it narrows the view right from the start, rather than opening up the possibilities and then knocking them out because they do not meet objectives, or whatever.

The Hon. JAN BURNSWOODS: Could I ask a general question? I am just curious as to why the report dealt with disposal of land but did not deal with acquisition of land for public benefit and public good.

Mr SENDT: I guess disposal is more problematic in that, in the absence of a strategy, if land is disposed of quite often the opportunity is lost, whereas if land is acquired the opportunities to use it for different uses remain.

The Hon. JAN BURNSWOODS: But would it not be true to say that, for instance, the acquisition of Ballast Point would be a classical example of an opportunity that would have been lost if SHFA in its advice to the Minister and so on had not actually taken action on that privately owned land? I just wonder why the report does not look at the whole picture, and why it focussed only on disposal.

Mr HORNE: I think the issue that was being raised with us at the time was that a lot of agencies had assets that they were asked to review as to whether they were surplus, and they were asked to put to government plans about disposal of surplus property. So the question on their minds predominantly was: How do we do that? All our information gathering suggested that the agencies were not entirely clear about the priorities that existed over disposal. Many of the agencies that we mentioned here had surplus property around the foreshore, and the question for them at that time was: What do we do with it? How is it disposed of in the most appropriate way? I guess that was the feedback coming to us and why we focussed on that particular aspect.

The Hon. JAN BURNSWOODS: But, for instance, in terms of linking public and private land for the foreshore walking path, which is about 17 kilometres, clearly it is very important to look at privately owned or leased land. If your report is about the benefits of a holistic approach, then I would have thought the other, more positive, side of things would have been relevant as well.

Mr HORNE: From a strategic point of view, that may be a policy issue that is of interest to people. But the particular problem procedurally that was being put to us at the time was the question of disposal. So we focussed on that aspect. You can draw lines at various points.

The Hon. JAN BURNSWOODS: But you make your own decisions about what you do investigations about and report on.

Mr SENDT: Yes, we do. While we quoted a number of specific proposals in the report, our audit was not a detailed audit of those disposal processes. The audit was fundamentally about decisions being made in the absence of a strategy, and that conclusion that we came to applies equally to disposals or acquisitions.

The Hon. ERIC ROOZENDAAL: Is it not the case that most of the foreshore land that has been sold over the past few years has in fact been private land, where various companies have been selling up, rather than involving government land that is being sold?

Mr SENDT: I am not aware of any statistics, Mr Roozendaal, but that could quite well be the case.

Mr HORNE: I do not know. I do not think we have specific measures on that. One of the issues at the time was that there was no whole-of-government information on what assets in fact were owned, let alone what had been disposed of. There have been a lot of moves in recent years to build up the so-called government property register and to consolidate government information around this issue. But, in terms of privately held land, there would be no central information about that. It is not recorded that way, so no-one would know that off the top of their heads. You would have to go round to all the councils and talk to them about what was going on, and then look at the government agencies as well. There had been a fair amount of government land, and obviously quite a lot of private land as well.

The Hon. ERIC ROOZENDAAL: I am sure I read somewhere in your report on the disposal of foreshore land that you noted that the city foreshore area was not a major concern to you because SHFA had very strong governance processes. Is that right? At page 46 you talk about SHFA's governance processes in relation to the city foreshore area in particular.

Mr SENDT: I do not think that is a fundamental problem with our report. The core area controlled by the Sydney Harbour Foreshore Authority is relatively small overall. In fact, it was quite surprising when we started this audit the number of players involved and the limited extent that SHFA had any involvement. We had thought that SHFA had a much greater involvement and responsibility than it did.

Mr HORNE: Yes, the question concerns the internal aspects of one organisation and, as the report says, yes, there were a number of detailed processes going on. What we tried to do was to map those detailed processes within each of the agencies together to see how they link together the high level and that is when we started to get a bit confused and started to ask some high-level strategic questions. As we said earlier, we did not audit the detailed internal workings of each agency, that was not our purpose. In the case of SHFA there were quite detailed arrangements there in place.

The Hon. KAYEE GRIFFIN: What gave you the impression that SHFA was responsible for more property?

Mr SENDT: Nothing more than sheer ignorance. We assumed from the name Sydney Harbour Foreshore Authority that it had quite extensive control over the foreshores of Sydney Harbour but, in fact, I must say, certainly its grounds are of a minority player.

The Hon. KAYEE GRIFFIN: It was not clear at the time where the ownership was vested?

Mr SENDT: We thought this was an important issue to look at, the Sydney Harbour foreshore land. Initially we thought that the Sydney Harbour Foreshore Authority would be the main organisation that we would be dealing with but once we started our research into the area we discovered the range of players involved and, as I said, there would be many more than SHFA, and SHFA was not the major player.

The Hon. JAN BURNSWOODS: This inquiry has been slightly bedevilled by its own problems. If you look at our submissions a lot of them are quite irrelevant to our terms of reference but they think that something called the Sydney Harbour Foreshore Authority must be relevant to everything. I know that because this is a State Government report you do not say much about the role of the Federal Government. Do you think it is an indication of how much of the foreshore land is actually in Federal hands? I would guess it would be more than in State hands.

Mr HORNE: Off the top of my head I really could not. We looked at it at the time. As you said, it is not within our jurisdiction but we did go and speak to the group running the Federation Trust to talk to them about how they fitted into the big picture. The question we put to them was similar to what we put to the State agencies: How does what you are doing fit within what everyone else is trying to do? Their response was that they were not required to go through State processes. They sought to do so collaboratively where they could but retained the right to do what they wanted within their own powers. But, yes, the pool of money and assets that the Federation Trust sits over is substantial. Hence, we thought there must be some mechanism to make sense out of all of that and we wondered why perhaps they ought to be more closely involved with the Sydney Harbour executive. They have a seat at the table but the relationship seems to us to be a bit more casual than strategic.

The Hon. JAN BURNSWOODS: But constitutionally only the Federal Government can sort that out?

Mr HORNE: Correct, and so we did not have jurisdiction to make any recommendations along those lines. I have to say that the relationships were not bad: they were talking to each other and dialogue was going on and we sought to make sure that that was working at some level, and it was. But nonetheless a plan as grand as it was working on obviously has a significant impact on the harbour foreshore and we thought, again, it would be better if there were a high-level strategic framework over the lot so that it could all sensibly be made together.

Mr SENDT: If the Commonwealth was working to a different agenda at least that would crystallise that and it would become clearer that the State had a strategy that suggested this happen, and the Commonwealth was adopting some different process. But again in the absence of a strategy where the Commonwealth decisions are being well informed is a matter we certainly did not look at but indeed we could not comment on quite apart from the jurisdictional issue.

CHAIR: Going back to the localised examples on page 46 it states that in relation to the Sydney Harbour Foreshore Authority, however, it is required under New South Wales Treasury's commercial policy framework to operate in a commercial manner in accordance with policies designed to emulate private sector practises and this includes the need to observe commercial confidentiality. Is that necessarily in conflict with the recommendation that you have made that the Government require earlier development through the planning process if well considered proposals were not commercial uses of foreshore land such as public open space and for working harbour? Is there a model where those two objectives could be brought together satisfactorily?

Mr HORNE: I think that is one of the difficulties. When we looked at the role of SHFA it has a very wide range of possible considerations, some very strong commercial ones. It has a very strong development role. The legislation also anticipates it has some open space objectives and those sorts of things. But SHFA only looks at a relatively small part of the overall picture. So we think that the need for an overarching plan is so that all the different players, be they local councils, SHFA or the National Parks and Wildlife Service can align their roles with some broader principles. Otherwise, I think on a project-by-project basis I do not think you can resolve those conflicts. I think they are impossible. There would be no median point between all of those that you could reach on a project-by-project basis.

Without a bigger picture strategic framework I do not think any of the agencies, be it SHFA or the department of XYZ can really resolve that problem. They will each look at each matter as best they can and try to reach a balance but I think it is too problematic. I think without a simpler guiding framework everybody will be conflicted to some degree and cannot get out of the loop. So hence there needs to be what we call a circuit breaker, and other water authorities overseas have done this, for example, for that reason.

CHAIR: Given that the Premier made his vision statement in 1997 we do not seem to be making much coherent progress in bringing it all together?

Mr SENDT: Certainly I think the metropolitan strategy needs to be released before you can then move down to more localised strategies, including the harbour strategies. Until we see the metropolitan strategy, and until that is finalised, it is difficult.

Mr HORNE: There was not an absence of strategies. If anything there were too many. Every time we would go to an agency and say "Do you have any strategy?" They certainly would supply us with a wealth of material which they would claim to be strategic, and, I suppose, in a sense it was. But when you have five strategies from this agency, another five from that and then you go and speak to the local council and it has other strategic issues going on and you try to weld that altogether it is not strategic. The difficulty is that some simplifying framework is not there so everyone is developing what they believe to be a strategic approach but it is not co-ordinated.

CHAIR: In recent weeks the Director-General of DIPNR told this committee that there will not be a metropolitan plan, there will be a series of documents released over a period of time. So we might be waiting for a long time before we get a plan.

The Hon. GREG PEARCE: Would you explain the retained profits of nearly \$1.4 billion in the Sydney Harbour Foreshore Authority 2003 report? How does that arise and what happens to it?

Mr SENDT: I might have to take that question on notice. I do not have the accounts with me or, indeed, anybody from the financial audit side of the organisation.

The Hon. GREG PEARCE: In terms of its superannuation liabilities of \$1.5 billion unfunded effectively, what sort of strategies do they put in place? What do you require them to put in place in relation to those unfunded liabilities?

Mr SENDT: We do not require any strategy. The Government has a strategy for getting rid of unfunded superannuation liabilities that all agencies are required to adhere to. I think it is by 2030 or thereabouts to pay off all unfunded superannuation liabilities, but I would have to confirm that.

Ms SYLVIA HALE: Is SHFA entirely self funded?

Mr SENDT: Yes, as far as I am aware it does not get any subsidy from the Budget.

Ms SYLVIA HALE: Is its income basically from properties it administers or properties that it disposes of?

Mr SENDT: Yes.

Ms SYLVIA HALE: Is it also required to return a dividend to the Government?

Mr SENDT: Yes.

Ms SYLVIA HALE: Is the dividend that goes to the Government from its after tax operations in terms of incomes from its properties?

Mr SENDT: It would be. Under accounting standards you can only pay dividend out of after-tax profits or retained earnings, that is, profits from previous years. There used to be what was called special dividends in the public sector. There may be returns of equity from time to time. I am not sure that there have been in the case of SHFA but generally dividends are paid out of after-tax profits.

Ms SYLVIA HALE: And any returns from the sale of property. Is SHFA equally interested in selling off public assets so that it can both fund its own operations and meet the requirement that it return a dividend to the Government? Is there an inner compulsion there?

The Hon. Jan Burnswoods: Point of order: This is another area we have gone over again and again. SHFA is not permitted to sell any assets.

[Interruption]

We went over this on Friday. I know that it takes Ms Sylvia Hale a long time to grasp some of these things on consent authorities and so on but really to put to witnesses who do not represent the organisation, who are not on the financial side of the Audit Office misleading questions based on mis-statements of fact, is really stretching the kind of stretching we have seen through the duration of this inquiry.

CHAIR: You had reworded your question but may be Auditor-General did not hear you.

Ms SYLVIA HALE: Yes. Presumably the authority would recommend to the Minister whether any properties were to be sold. But it would have a financial interest in their sale in so far as any returns would come back to the authority? Would that be correct?

Mr SENDT: If the landholding is such that it is on SHFA's books and SHFA retains some part of the sale, that would occur in an accounting sense. Whether SHFA is driven by that imperative is something you would have to ask SHFA itself.

Ms SYLVIA HALE: But it would be equally bound by that asset management guideline that it obtain the highest and best return from—

The Hon. JAN BURNSWOODS: They are not permitted under the law of New South Wales to sell assets. Madam Chair, this whole line of questioning is highly misleading and I would ask you, if you wish to be so soft again, to ask the member to reword her question.

CHAIR: No, I will not. I think she is perfectly entitled to ask the question as she has asked it. She may proceed.

Ms SYLVIA HALE: What I am suggesting is that the way in which SHFA is constructed and the guidelines to which it is subject provide an ongoing incentive for it to continue to recommend that assets be disposed of.

The Hon. JAN BURNSWOODS: Whose assets?

Ms SYLVIA HALE: Publicly owned assets that come within—

The Hon. JAN BURNSWOODS: The proceeds do not go to SHFA because it cannot dispose of assets.

Ms SYLVIA HALE: Assets that are on the authority's books, where would the returns go? Would they go to the authority or would they go to consolidated revenue?

Mr SENDT: Are you referring to returns from development or returns from rental agreements or—

Ms SYLVIA HALE: Returns from disposal of properties.

Mr SENDT: I am not clear as to the legislative provisions regarding sale of properties for SHFA so I could not comment on that. If it were permitted to sell assets the same arrangements would apply as to any other commercial organisation, that the proceeds would go to the organisation. Any profit on the sale would be recognised in its accounts and that profit could be used to fund dividend payments.

The Hon. JAN BURNSWOODS: So it is not allowed to sell or—

Ms SYLVIA HALE: Would you mind clarifying for the benefit of the Committee what the actual process is for properties that are shown as being within the authority's portfolio?

The Hon. ERIC ROOZENDAAL: Point of order. The witness has previously answered on at least two occasions that this is outside his area of expertise. He is not up to date on the legislation surrounding SHFA and it is inappropriate to ask him questions about the operation of SHFA when it is clearly outside his expertise. He has twice stated that those questions would be better directed to SHFA. I just think that it is badgering of the witness. To try to squeeze an answer out that you want to hear, Sylvia, is a little bit ridiculous. He has made it clear that this is outside his level of expertise. He is not here to speak on behalf of SHFA. He does not have an intimate knowledge of the legislation surrounding SHFA, nor should he. It is not his responsibility. I ask the Chair to rule on that point of order.

Ms SYLVIA HALE: In your capacity as—

The Hon. JAN BURNSWOODS: Madam Chair, could you please ask Ms Hale to speak to the point of order or could you please, for a change, give us a ruling before you allow her to continue on with her questions?

The Hon. GREG PEARCE: There is no point of order.

CHAIR: There is no point of order. Mr Sendt, are you able to answer Ms Hale's question? You are quite within your rights to say that you cannot, but are you?

Mr SENDT: I think the question is about the legislative provisions under which SHFA operates and I think that question should probably be directed to someone with training in the law or with SHFA itself. The Audit Office is not a legal office and I am not a lawyer by background and I do not know the details—

The Hon. ERIC ROOZENDAAL: The witness upholds my point of order.

Ms SYLVIA HALE: In auditing the accounts presumably you would be aware of how income is distributed. That was the only reason I was asking.

Mr SENDT: Yes, we certainly would be aware of how income is distributed.

The Hon. JAN BURNSWOODS: But by definition there is no income from what you are trying to make up.

Ms SYLVIA HALE: So you assert. That is what I am trying to establish.

The Hon. JAN BURNSWOODS: You might have had a look at the Act before you came along to this inquiry.

(The witnesses withdrew)

Dr EDWARD LEO HARKNESS, Architect, 40/313 Harris Street, Ultimo, affirmed and examined:
JANET DENISE MATTHEWS, Company Manager, 1/25 Pirrama Road, Pyrmont,
JEAN HELEN STUART, President, Pyrmont Community Group, 85 Point Street, Pyrmont, and
CHARLES PERRY, Deputy President, Friends of Pyrmont Point, 510/66 Bowman Street, Pyrmont,
sworn and examined:

CHAIR: In what capacity are you appearing before the Committee?

Dr HARKNESS: I am with the Pyrmont Community Group.

Ms MATTHEWS: I am a member of the Pyrmont Community Group but specifically representing the Macarthur and promontory buildings.

Ms STUART: As President of the Pyrmont Community Group.

Mr PERRY: As Deputy President of the Friends of Pyrmont Point.

CHAIR: Are you conversant with the terms of reference of the inquiry?

Dr HARKNESS: I have read them.

Ms MATTHEWS: Yes, I am.

Ms STUART: Yes.

Mr PERRY: Yes.

CHAIR: If any of you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee please indicate that fact and the Committee will consider your request. Do any of you have an opening statement to make?

Mr PERRY: Yes, I also seek leave to table my opening statement, Madam Chair.

CHAIR: It would be appreciated if that could be circulated to the Committee. You may proceed.

Mr PERRY: Thanks for the opportunity. I would like to talk about SHFA's record. Last Friday the SHFA Chairman, Mr Isaacs, took umbrage at the suggestion that Pyrmont is a planning disaster. He and Mr Lang gave a glowing story from their own PR material about SHFA's record. Since they kept talking about balance we present some different views about Pyrmont development to give balance. Architectural writer Elizabeth Farrelly says, among other things, that SHFA's master plan for the fish market is "dopey". John Toon, retired Director of Sydney University's Planning Research Centre, says that Pyrmont had struggled to add much to its existing urban lifestyle despite thousands of new apartments. "What you have," he says, "is high rise dormitory suburbs, as opposed to low rise dormitory suburbs." Harry Seidler says, "Now years later, just see the unmitigated, disastrous planning that is on the ground: overbuilt large squat boxy housing blocks on each site from which only very few occupants can see the water. Living rooms face each other across narrow gaps between buildings." Winston Barnett says, "Few independent observers could argue that what has in large measure been produced is of much merit... On reflection, none of this should be surprising. It is the product of an essentially laissez-faire approach to planning where market forces are the only significant determinant. Ex Prime Minister Paul Keating describes Pyrmont as a "lost opportunity". An article about the retired SHFA Chairman says, "Mr Gleeson also called for a halt to residential

development along the CBD foreshores, conceding it had probably been 'overdone' in areas like Pyrmont because of a combination of government and private development."

In relation to term of reference (a), our first submission shows the conflict between SHFA's roles as foreshore protector and real estate developer—as an aside, I am pleased to see that the Auditor General made similar comments—between stewardship goals and commercial goals. The water police site case study is illustrative. With hindsight just about everybody, except SHFA that is, acknowledges the correctness of the decision to make the site a park. SHFA's statement that the site was zoned residential does not excuse its behaviour. The site is already public land. Had SHFA discharged its statutory responsibilities correctly, it would have found a way to rezone the land. Instead it behaved like any other developer, except that it could do its own master plan, get its Minister to approve it, prepare its own DA, assess its own DA, whip it up to the Minister for final approval and in no time—more blocks of flats on the harbour. Our submission shows that this conflict is irreconcilable—again a point that the Auditor General has made. We say SHFA should stick to the landlord role, which it claims to do so well, and should lose all planning and assessment responsibilities.

In relation to term of reference (b), we show that SHFA's lines of communication with our elected council do not work. As witnesses have already said, there is SHFA to council communication at bureaucrat level. But we are not talking about the height and shape of the kerbing; we are talking about the big picture. At this level, communication has been meagre and ineffective. Too little, and as John McNerney said, too late. As council will end up with the responsibility for these areas, the sensible thing would have been to involve council early and in depth about proposed developments within council areas. Instead, council ends up having to lodge objections to DAs, just like the rest of us. The former council even authorised a publication of proposed developments in Pyrmont and their shortcomings. I would like to tender that document if I may.

CHAIR: Thank you.

Mr PERRY: With major developments such as the fish markets, Bank Street and Blackwattle Bay still to come, there is still an important issue to be addressed. We also show that the combination of planning and assessment roles in SHFA reduces accountability for each individual step in the development process. In relation to term of reference (c), we show that SHFA's DA functions are no different from those of a council, but council processes are far more open and transparent. We think that Mr Lang's claim that there is less potential for conflict of interest in SHFA than in councils, because the Minister rather than council gives consent, does not reflect reality. Our supplementary submission illustrates potential for conflict of interest where SHFA prepares master plans which it then assesses, especially when they are for commercial operators, such as the Sydney Fish Market. Apparently Minister Knowles approved this one just last week.

In relation to term of reference (d), we show that enhancement of SHFA's assessment responsibilities on 4 August 2003, supposedly in the public interest, has precisely the opposite effect. It might simplify life for SHFA but makes the assessment process even less transparent. It also limits the opportunity for the Minister to determine consent to a DA on the basis of genuinely independent advice. In relation to term of reference (e), we point out that retired chairman Gleeson refused our request to conduct a multidimensional study into open space, traffic and other community issues. We contend that SHFA's claims about the amount of open space in Ultimo-Pyrmont are specious. Their Cox Richardson report, which apparently has not been made public, says there are 19.8 square metres per person in Ultimo-Pyrmont and that this is "well in excess" of the 15 square metres per person in planning guidelines.

Without going into the detail now, our submission shows that the ratio right now is about 11 square metres per person, which is well below any accepted level. We suggest that the general thrust of SHFA's material is misleading. So is the detail. The area of St Bartholomew's Park is 411 square metres, not 1,000 square metres as claimed. We think that overstating the area by 143 per cent is just a touch misleading. The area of nearby McCreadie Reserve, a dank, overshadowed grass strip, is also shown as 1,000 square metres and is overstated, unless you want to throw a few roads into the count as well. Such areas should probably not count at all as they are pretty useless for recreational purposes.

Who do you believe? One thing for sure is that however much the community claims that Ultimo-Pyrmont is short of quality open space, SHFA will come up with a rationale to assert that it is more than generously served. Interestingly, the pictures in SHFA's booklet show water and green space at the northern end of the peninsula. There are few, if any, pictures of Ultimo in a book about Ultimo-Pyrmont. Is that because the provision of open space becomes progressively worse as you move through to Ultimo? We recommend that the committee obtain city council's infrastructure report, which will be released in a few weeks. You can then assess the competing claims about open space against an unbiased, professional evaluation to get nearer to the truth.

Term of reference (f) on transparency of planning assessment methods and processes is straightforward. Transparency is the first thing to go out the window when a body can assess a DA, including its own, and submit it to its own Minister for consent, especially when that body is not elected, does not have to disclose its reasons for decisions and does not allow them to be debated in any forum. We submit that the absence of checks and balances in SHFA's processes and behaviour fall far short of the high standards of public administration expected in the Westminster system of government. Secretive processes destroy confidence in the administration and create the perception, if not the reality, that decisions are not arrived at fairly and are free from corruption. They encourage inappropriate transactions and under-the-counter deals that are contrary to the public interest.

The foregoing brings us to the subject of probity. ICAC states that "a probity auditor is typically an individual (or organisation) who is engaged to observe and review a complex government project". On Friday Mr Lang claimed to have implemented all the necessary requirements for probity in SHFA processes. We say, "prove it, using the proposed disposal of the former water police site as an example". Attachment A has a suggested list of questions to help the Committee in this task. Our supplementary submission suggests scrutiny of the relationship between SHFA and City West Housing Pty Ltd. We support the concept of affordable housing. However, this does not preclude the need to ensure that the outcomes accord with the objectives of such schemes, and that unintended consequences are minimised. We understand that Star City and Multiplex, among others, are represented on the board of City West Housing Pty Ltd. We suggest that the Committee should obtain information about the composition of the company's board, its ownership structure, assets and beneficiaries.

In terms of disposal of significant public assets, we suggest that the Committee will gain a better understanding of the transparency of the dealings of SHFA and its predecessors in significant public assets from better information on these transactions. We suggest that SHFA should be asked to answer the questions at attachment B to this statement. This should give an insight into the extent of the sell-off of public assets by SHFA and its predecessors, the degree of public and private benefit from these sales and the probity of the transactions.

In conclusion, we are often asked: Why should the community have to fight to prevent irrevocable loss of community assets that is being instigated by the very organisations responsible for their protection? We contend that one reason is that SHFA is an unelected and essentially unaccountable body. It sets its own measures of success and then congratulates itself for performance against them. It operates in relative secrecy, while at the same time claiming to be open and transparent. It is also riven with internal conflicts of interest. SHFA exacerbates the potential conflict of interest by actively denying a need for openness and external scrutiny. In the remaining time of SHFA's stewardship of public lands in Pyrmont and Ultimo the community deserves and demands the right to scrutinise SHFA's dealings in land in the area. A commitment to high standards of probity, transparency and meaningful consultation with the community would be widely welcomed.

Ms STUART: Thank you for allowing me to speak to you today. May I take the opportunity of saying how appreciative we are of Minister Knowles' decision to sell the Elizabeth MacArthur Bay site to council in order that it may remain as green open space for all Australians. I want to give you perhaps some more detailed insight into how SHFA deals with the community. In May 2004 SHFA formed a community reference group [CRG] to consult with the community. It met twice. Given the intense pace of development in Ultimo and Pyrmont, development applications are a major community issue, yet discussion of DAs under assessment by SHFA was specifically excluded from the CRG's terms of reference. In spite of the fact that Dr Lang, in a letter to Pyrmont Action, said that "members of the community, including SHFA's community reference group, had the opportunity to be

involved in and access to the assessment process, including access to write to, talk to and meet with the planning assessor who has made himself available throughout the process".

However, this was not the case. The planning assessor was not invited to attend the community reference group's meeting on 24 August, although the DA for Waterfront Park West was being assessed by SHFA. In actual fact Waterfront Park West was not even on the agenda, and I seek leave to table some documents including the letter from Mr Lang. The community reference group purports to inform community representatives on the status of DAs and master plans. However, by the time it needs to review and discuss these plans, they have been finalised without meaningful community input. This was the case when Waterfront Park West was given conditional approval. Discussion of DAs invariably ended with a general comment, "we will have the opportunity to comment after the Minister has approved the master plans" or "when the relevant DA is on display".

Thus we have no meaningful role in developing or influencing the assessment process. SHFA failed to honour a request made at the first meeting of the CRG on 29 June to invite Robert Black of DIPNR to the next meeting to discuss Dalton House. He was not invited although he had assured us he would be happy to attend if he was given a day or so's notice. We also asked for SHFA's planning assessors who are involved with particular DAs to attend the meeting. We were told that this was not appropriate despite the assurances given by Dr Lang to Pymont Action in his letter of 1 October. SHFA's outlines of development plans were vague, incomplete and evasive. For example, the first meeting was presented with an outdated master plan for the fish markets, and although the complete revised plans were requested for the second meeting they were not made available.

After the second unsatisfactory meeting the members of the community reference group met to determine how the consultation might be improved. At no time were we offered the opportunity to be involved in the assessment process beyond being able to make written submissions to the DA. It was now some three months since the last meeting so we decided to prepare our own agenda for the meeting on 30 November, which would ensure that our concerns were addressed. This agenda was agreed and forwarded to SHFA. Mr O'Neill then wrote to us cancelling the meeting. The reason he gave was that there was insufficient time to organise the agenda and that a subsequent meeting would be notified. There have been no further meetings.

The productive thing however—and I believe there is always a productive thing that comes out of these confrontations—that came from this experience is that we decided to form our own group. It's name is the Coalition of Community Groups. The members of this group are Pymont Action, Pymont Community Group, Friends of Pymont Point, the Harris Centre, SAPS, the MacArthur and Promontory Residents Group, the Watermark Residents Group, and the parents and citizens of Ultimo Primary School.

Although SHFA had already approved a conditional development, our first priority was to change the proposed design for Waterfront Park West. Although it had been approved, we were determined to change it. We decided to take some responsibility for our own needs and consult with all the other stakeholders in an effort to achieve a scheme which was in keeping with council and community aspirations. Now, working together, we have developed an alternative scheme for Waterfront Park in conjunction with our consultant architects. We have consulted with Sydney City Council, Lend Lease Development and the New South Wales Maritime Association. We presented the alternative scheme to the community forum, the Mayor's community forum, on 4 November, and received overwhelming endorsement.

The designers of the alternative scheme and Hassall's, designers of the initial scheme, have met with Lend Lease Development and, together, they have redesigned the park from scratch to reflect council and community aspirations. The design will be presented to community groups and the Sydney City Council within a few weeks. SHFA has agreed to facilitate any changes to the conditionally-approved development application which may be requested by Lend Lease Development. Instead, had we had meaningful community consultation initially, we would have been able to avoid all this.

SHFA's model for the community reference group is flawed because it did not bring all stakeholders together in the decision-making process. With all decision-makers present participants

can understand the potential, and quick solutions may be reached which are satisfactory to all. Genuine consultation will deliver a high-quality park which reflects the needs of all stakeholders. With the co-operation of Lend Lease Development, Sydney City Council, Hassall's, the Churchill partnership and the coalition of community groups, what was a confrontation has turned into a win-win situation.

Now, we ask that SHFA revise their strategies for community consultation and development process whereby all stakeholders may have input into the development and assessment of development applications and master plans. We must not forget that it was people's action that forced the change from Sydney Cove Redevelopment Authority to Sydney Cove Authority with more emphasis on restoration. SHFA are, in the main, pro-development and I think there should be a push by this Committee to change the charter of SHFA to one on restoration.

We must not sell off all our precious public land. There is an enormous amount of money flying into both Liberal and Labor from developers. I think we need to ask government to change the rules so that if Sydney loses its working harbour and some 33 hectares of prime foreshore land are freed up, we have a development with the public interest in mind and developers are denied the right to get a box seat on the edges of our unique asset, Sydney Harbour.

CHAIR: Thank you very much for that. You indicated that you had some documents you were going to table.

Ms STUART: Yes.

Documents tabled.

CHAIR: We will proceed to some questions.

The Hon. GREG PEARCE: I was interested in Mr Perry's comments in relation to Saint Bartholomew's Park. What is the basis for the assertion that Saint Bartholomew's Park has been incorrectly measured. You suggest it is only 411 square metres.

Mr PERRY: A few of us thought was a bit odd that it appears in that wonderful glossy publication as 1,000 square metres, which is 0.1 of a hectare so we went and measured it, with a tape measure, and it is 411 square metres, give or take a square metre.

Dr HARKNESS: I am aware that Janet Matthews would like to make a statement.

CHAIR: I am sorry. Bearing in mind that we have 15 minutes left for questions, including your statement. You may proceed.

Ms MATTHEWS: I did not prepare a formal brief. The words I wanted to put to you today are that it is a very interesting situation we have with SHFA, in that they are property developers, they are landlords—landlords in the short term to commercial people, they are landlords in the long-term, with 99-year leases, and they also have the role of the protection of the Harbour frontage to the community and to New South Wales at large..

The situation where I am sitting here in front of you today is a very precarious one because SHFA was in fact the landlord to a commercial application, which was a company called Doltone House. They actually rented the old casino site, or part thereof, when they were getting the now up and running casino ready. Having said that, when the building was due for destruction, Doltone House had nowhere to go. In the process of Jones Bay Wharf coming on line, being part of the Pyrmont area, SHFA was finding it very difficult reportedly to find somebody to take on the wharf, to renovate it. It was quite extensive renovation, similar to the Woolloomooloo Wharf, which is now up and running.

In saying that, SHFA then went through a process of putting into place three separate development applications that were consented to. The first was in fact a residential-commercial mix, the second was a serviced-apartment and commercial mix, and the third and final one—which ended up coming to fruition—was completely commercial. In hindsight the community was led, albeit by very informal meetings, chit chats, telephone conversations but nothing formal, nothing on paper. But

the line was that they could not find a developer to take on the wharf unless they went into the final stage of this completely commercial situation.

It was sold to the community that, in essence, because it was going to be commercial it would be of benefit to the community because it would have more than likely a nine-to-five, Monday-to-Friday aspect. The documentation that they put forward at the base of the redevelopment at Pyrmont, which was State Regional Environmental Plan No. 26, anything that went into Pyrmont had to be something that was very much aligned with residential and commercial working hand-in-hand together.

This final development application was approved and consented to by the Minister, SHFA hand to hand it up to the Department of Infrastructure, Planning and Natural Resources [DIPNR] just because of the way the process worked. DIPNR was in fact the one that finally took it up to the Minister, and the Minister finally approved it. In hindsight, though, residents not being professional gurus in the developing world, unfortunately what happened was that there was one-eighth of this wharf which was earmarked, now we look at it, as a very large space with two huge kitchens. It comes to pass that application was put forward by Multiplex Toga to the Land and Environment Court for a 900-seat function centre right in the middle of an amphitheatre of residences.

SHFA knew all about this but approved it, handed it up to DIPNR and DIPNR had to process it. DIPNR refused it; the Minister refused it. Multiplex Toga did not like it, took it to the Land and Environment Court, and that Court refused it.

The Hon. JAN BURNSWOODS: Which site is this?

Ms MATTHEWS: This is Jones Bay Wharf, 19-21 on Pirrama Road, just near the casino site.

The Hon. JAN BURNSWOODS: Is this Doltone House?

Ms MATTHEWS: Yes, it is. Having said that, Multiplex Toga then obviously proceeded to make a deal with Doltone House. Doltone House then put an application in to SHFA for a place of public entertainment for live music. Again, the same venue. But this time the consent authority had been handed back to SHFA. SHFA by sheer volume of community sway, realised that it could not go against the Land and Environment Court decision and so refused the application. But SHFA, who is the consent authority—and, dare I say, consent authority acting on behalf of the Minister, advising the Minister or all any other way you want to look at it, but SHFA is the one of public deals with—allowed Doltone House to open its doors and start operating a 900-seat plus function centre in the midst of all these people moving into the apartments, and, dare I say, very expensive apartments which SHFA had sold to the developers and the developers had on-sold.

A lot of the people who have moved into the area did not finalise their transactions until such time as the decision in the Land and Environment Court was had. So they knew that they had some security knowing what was going in. SHFA did nothing about stopping this. DIPNR, because now it is not the consent authority, or the consent authority to the Minister, did nothing. So the community was left beating at the doors of Dr Lang, of the people in DIPNR, and finally beating on the door of Sydney Council. Sydney Council, that we pay rates to, is now taking it to the Land and Environment Court, and it is being heard this week, to close down Doltone House. The question I put to you is: How did this happen? It happened because somebody, namely SHFA, is a developer. They have to get a deal across the line. How was that deal got across the line? They are friendly with Multiplex Toga. You have heard from my other two friends here the involvement with Multiplex Toga or Multiplex on other boards which SHFA is involved with. We are talking the big end of town and we are the small community trying to protect our own properties. I will leave that with you. Thank you.

CHAIR: Thank you. Dr Harkness did you want to make an opening statement?

Dr HARKNESS: I have just a very brief statement here that I will run through quickly.

The Hon. JAN BURNSWOODS: Madam Chair, could you give us some guidance, given that we are due to finish at 3.45 p.m. What are you intending to do about questions?

CHAIR: I am proposing to stay on schedule. I think our next witness is here.

The Hon. JAN BURNSWOODS: Perhaps you could ask these witnesses to be as brief as they can. Obviously we can put a lot of questions on notice.

CHAIR: It is up to you, Dr Harkness.

Dr HARKNESS: This will take about two minutes. On 18 February, last Friday, being the first day of this inquiry, Mr Isaacs and Dr Lang made statements to the effect that the Sydney Harbour Foreshore Authority is a recommending authority, and not a consent authority. Mr Isaacs and Dr Lang told the inquiry that the consent authority is the Minister. Please note that the words, "recommending authority" and "consent authority" are not in the terms of reference of this inquiry.

On that same day of the inquiry the Deputy Lord Mayor of the City of Sydney stated he believed that SHFA was the consent authority. A member of General-purpose Standing Committee No. 4 insisted that the Deputy Lord Mayor should speak words to the effect that "SHFA is not the consent authority. The Minister is the consent authority." The Deputy Lord Mayor declined to mouth those words. I repeat, these words "recommending authority" and "consent authority" do not appear in the terms of reference of this inquiry.

Through a submission, of which you have a copy, I cannot cross the letter from Lucy Turnbull, a former Lord Mayor of the city of Sydney, who wrote, "As Sydney Harbour Foreshore Authority [SHFA] is the consent authority for this portion of Pyrmont, the city experiences the same difficulties as you in obtaining copies of development determinations." It would appear that SHFA's working partners have been in a state of confusion about the role of SHFA. Given that a former Lord Mayor and the present Deputy Lord Mayor thought that SHFA was the consent authority, members of the community might be excused for misunderstanding the distinction between a recommending authority and a consent authority.

My impression on the first day of the inquiry was that SHFA is bulletproof. Based on the submissions made on the first day of the inquiry, it was asserted that SHFA makes no decisions of consent; and therefore SHFA cannot make an imperfect decision. The fact that Mr Isaacs and Dr Lang attempted to make their role clear and the role of the Minister clear, appears to have been made for a purpose, that is, to distance SHFA from any consent. SHFA is to be seen to be blameless for any unpopular consent. SHFA does not give consent—or does it? This is further confused by a statement in the terms of reference of this inquiry. I quote from those terms of reference:

That General Purpose Standing Committee no 4 inquire into and report on the management of the Sydney Harbour Foreshore Authority, and in particular

- (d) the process by which the Sydney Harbour Foreshore Authority acquired enhanced consent powers, and the role of the Sydney Harbour Foreshore Authority as a consent authority for land that it and ministers.

To a lay person this reads as though SHFA has been and is a consent authority; or are the terms of reference for this inquiry in error?

The Hon. JAN BURNSWOODS: Yes, they are.

Dr HARKNESS: The terms of reference—

The Hon. JAN BURNSWOODS: We have given you a very simple, short answer. We do have a lot of questions.

Dr HARKNESS: I am here to make my submission. My continue?

CHAIR: Yes, you have the call.

Dr HARKNESS: The terms of reference, to my reading, state that SHFA is a consent authority. If SHFA is not a consent authority, should the terms of reference for this inquiry be withdrawn and corrected? If this were done, how could the community be expected to be other than

confused? Communication between SHFA and the community has been a concern for the community. For there to be at this stage, years after SHFA was created, confusion about its role in the minds of its authority partners (for example, the Council of the City of Sydney) and in the minds of members of the community is a reflection on SHFA's effectiveness in communication.

The Hon. JAN BURNSWOODS: I asked before about Doltone House. Could you just confirm for me, my information is that Doltone House is on a 99-year lease, that there is no contract between SHFA and Doltone House; there cannot be. There is a whole history of first DAs, a second DA in 2002 and so on, but perhaps the most crucial question—and this is contrary to all of the things that you have been saying, both here and elsewhere—is that when SHFA assessed the DA, which by law it has to if an applicant submitted it, SHFA declined to recommend the DA and cited the Land and Environment Court decision in doing so. Given all those things, which were public knowledge at the time you made your submission, would you like to revise the comments you have made in your written and oral submission?

Ms MATTHEWS: No.

Dr HARKNESS: Of course not.

The Hon. JAN BURNSWOODS: My question was actually to Ms Matthews, not to you.

Ms MATTHEWS: Can I just clarify: SHFA was the landlord to Doltone House when it was in the old casino. Doltone House, I do not know but I believe has purchased a strata title from Multiplex Toga and Multiplex Toga is the head lessee of a 99-year lease. Does that help the confusion or not?

The Hon. JAN BURNSWOODS: No, it just makes it worse, I am afraid. Perhaps the major thing is, as I said, the crunch seems to be that despite all of the allegations you made, when SHFA assessed the DA, SHFA recommended against it.

Ms MATTHEWS: Yes, it did, because the original court case was that it was refused and the reason why SHFA had to refuse it was because the court refused the first application. However, dare I say, the community had a very difficult time because SHFA kept on saying that they were going to be the ones that were going to condition it, if it was approved, and SHFA was going to be the one that was going to be the policeman, when we had to ring up at three o'clock in the morning because of the noise and the disturbance to people's residential amenity.

Unfortunately, SHFA did not have a very good record when Doltone House was their own tenant in the old casino site. They had three rangers and three rangers were very much manning the Darling Harbour aspect and did not care that you had residential people, to whom SHFA had sold the property to the developers, the developers then made the units and the units were on sold but the end user was the community that is now there.

The Hon. JAN BURNSWOODS: So you would agree there is no contract between SHFA and Doltone House?

Ms MATTHEWS: I cannot agree to that. And that is my question to you as the inquiry.

The Hon. JAN BURNSWOODS: There is no ability for SHFA to gain from Doltone and SHFA recommended against the DA.

Ms MATTHEWS: No, I do not say that at all. That is the question I have. There is such an intertwining between Multiplex, SHFA, Doltone House, trying to get a sale together and trying to make the wharf stack up when it was to be sold and how were they to do that? The underlying thing was that it was rather curious that we had to go from a residential-commercial mix—and that time was the height of the real estate market and everybody else seemed to be able to sell residential properties on the wharf—they ended up putting a commercial flavour through the whole wharf or commercial consent through the whole wharf. That seems rather curious. And dare I say—

The Hon. JAN BURNSWOODS: All this is very interesting but you continue, I am afraid, not to answer my question.

Ms MATTHEWS: Well, what is your question specifically? What is your specific question? I am very curious.

The Hon. JAN BURNSWOODS: If there are only one or two minutes, I am happy to hand over to the Opposition or to Ms Hale.

Ms SYLVIA HALE: No.

The Hon. JAN BURNSWOODS: Mr Perry, in your submission you state that SHFA "played a key role in attempting to destroy Ballast Point, Callan Park and The Rocks?"

Mr PERRY: That is not correct.

The Hon. JAN BURNSWOODS: What did you say?

Mr PERRY: Sorry, no—

The Hon. JAN BURNSWOODS: Those comments were inadvertent.

Mr PERRY: If I have said that SHFA attempted to destroy—I am not sure of the words—

The Hon. JAN BURNSWOODS: No, the words were "played a key role". Anyway, if you want to play semantics—

Mr PERRY: No, I would like to answer the question.

Dr HARKNESS: That is not what he said. Don't try and put words into his mouth.

The Hon. JAN BURNSWOODS: I have not finished the question. You got me before I had asked the question. In your submission you state that SHFA played a key role in attempting to destroy Ballast Point, Callan Park and The Rocks. Given that SHFA is transforming Ballast Point, having saved it from private development, given that SHFA has preserved over 100 heritage buildings in The Rocks and given that SHFA has never had any role of any kind in relation to Callan Park, can you tell the Committee how you justify publishing that statement?

Mr PERRY: I would acknowledge that SHFA had no role in attempting to build on Callan Park or Ballast Point.

The Hon. JAN BURNSWOODS: So why did you make that statement in your submission?

Mr PERRY: That was incorrect.

The Hon. JAN BURNSWOODS: Good, thank you. If I can go on: Mr Perry, in your supplementary submission you assert that SHFA has been engaged to prepare plans for a fee for a private development in Pymont known as Union Street. In fact, there has not been any such engagement, has there?

Mr PERRY: My understanding is that they have, and that is my understanding, so I will stick with it.

The Hon. JAN BURNSWOODS: Just to correct the record, SHFA has had no role in this other than playing its normal role as assessing agency for the Minister. How can you say that SHFA received a fee?

Mr PERRY: My understanding is that SHFA have prepared master plans for the fish market sites and the Union Street supermarket for a fee on behalf of the owners of those sites.

The Hon. JAN BURNSWOODS: That is a bit different from SHFA being paid to prepare plans for a fee for a private development.

Mr PERRY: I thought it was the same.

Ms SYLVIA HALE: You are splitting hairs there.

The Hon. JAN BURNSWOODS: We have now identified three errors of fact in your original submission and one in your supplementary submission.

Dr HARKNESS: That is not true.

The Hon. JAN BURNSWOODS: To ask my third question—

CHAIR: It will be the last question.

The Hon. JAN BURNSWOODS: In the same submission, the supplementary one, you assert that as SHFA was paid this by the applicant of Union Street—which, of course, was not the case—then SHFA would therefore be favourably disposed before the application. In short, you have actually said that SHFA has effectively taken bribes from an applicant?

Mr PERRY: No, I did not.

The Hon. JAN BURNSWOODS: You have not published any evidence to back up your statement. How would you justify that?

Mr PERRY: No, I did not say that they had taken bribes.

The Hon. JAN BURNSWOODS: Well, when you say that because SHFA had taken a fee they would—to quote your submission—"be favourably disposed towards the application", it is pretty much an allegation that SHFA has taken bribes, is it not?

Dr HARKNESS: Madam Chair, should not this Committee be listening to the witnesses and then they can consider what the witnesses have said. I saw this happen on Friday where this speaker tried to force the Deputy Lord Mayor to speak words that she wanted said.

CHAIR: Order!

The Hon. JAN BURNSWOODS: Madam Chair, the witness cannot take a point of order, as you well know.

CHAIR: That is right.

The Hon. JAN BURNSWOODS: Mr Perry—

The Hon. GREG PEARCE: It was the last question three questions ago.

CHAIR: If we are to stick to our schedule that was the final question. I would like to thank each of you for your submissions and for being here. Obviously, we will follow up on a number of the questions that you have raised as we deliberate.

(The witnesses withdrew)

NARELLE MAY THIRKETTLE, Credit Risk Manager and community representative of the Uniting Care Harris Community Centre, 45/61 Macarthur Street, Ultimo, sworn and examined:

CHAIR: Are you conversant with the terms of reference of the inquiry?

Ms THIRKETTLE: Yes, I have read them. I am a local resident who has been involved in many of the local issues for a long period of time, especially those who have written submissions and who have asked me to represent them.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Do you have an opening statement that you would like to give to the Committee?

Ms THIRKETTLE: Yes, I will try and be brief because I am very happy to take questions on the submission or any of the material I have brought along. However, I do think it is very important to respond to SHFA's submission to you on 10 September that they put in after they had read the community's submissions. I would also like to highlight some of the confusion within the community about SHFA's roles in various projects—and perhaps they have a difficulty in balancing a number of different hats on different occasions—and to provide some evidence of that confusion which may not only confuse the community but perhaps is also shared by other government agencies at times and it may even be within SHFA difficult to work out which hat they are wearing at a particular moment for a particular transaction. Along those lines, the little instruction said to bring eight sets of documentation. It is not as glossy as what SHFA provides, but it is a backup. Anything I refer to, the document will be there.

CHAIR: You are tabling some additional information?

Ms THIRKETTLE: Yes. Those documents include lots of things I wish to highlight. There are different roles that SHFA is playing at different times, which is very confusing for all of us. In those documents you will notice, for instance, that SHFA claimed at one stage to be containing vocal public opposition to the Darling Harbour unfiltered emission stack for the cross-city tunnel. That is in the first document in the booklet. We find that very interesting in that which hat did they consider they were wearing when they were going to the trouble of containing vocal public opposition to that piece of infrastructure that affects our health?

At other times they were busy at public meetings and in fact at the Ultimo precinct committee meeting, at one stage the director of built environment for SHFA told the community that there was nothing SHFA could do to address the concerns that the community had about the unfiltered tunnel and exhaust stack from Darling Harbour because they were a government department and they had no say in this. It was all to do with the other government departments.

But you will also notice that whilst this was going on, SHFA had actually entered into a memorandum of understanding with the RTA to work towards relocating the proposed stack, which is now currently built in Darling Harbour, to within a new building in Darling Harbour to remove the visual trigger. So on the one hand they are telling a community meeting that there is nothing they can do because it is all these other people that are involved, just as they have done in their submission to you on 10 September. If I were you reading that response, I would think that is quite reasonable because they are SHFA and other people such as the RTA and DIPNR are involved with roads and tunnels and stacks.

But I think it is important that you see those documents, which were tabled in the upper House last year. And that is the only way that the community has become aware of this involvement of SHFA because it has all been done in secret and we only became aware through the documents tabled in the upper House, of which we are very thankful.

So you can see some of our confusion as to what role they are playing at different times. You will also notice in one of those letters on 16 December that SHFA wrote to Sam Haddad of DIPNR recording the joint SHFA-DIPNR position on the relocation of the unfiltered stack. So on that

occasion are SHFA talking on behalf of DIPNR, hence some of our confusion? At the same time all of this is happening, SHFA had a representative who sits on the cross-city tunnel, the AQCCC, the Air Quality Community Consultative Committee. That committee was charged with the responsibility, and has community representatives on it, of agreeing to the decision—and they were under quite some timing pressure—of where to relocate the community-based monitoring station and the two elevated monitoring stations, which are also part of the conditions for the cross-city tunnel.

As part of those conditions they were to bear a relationship to the location of the stack. SHFA had a representative on that committee who sat through all those discussions and never said, "With a different hat we are working to move the stack, which will then bear a relationship to where you might choose to put a monitoring station." So again, they felt they were part of the committee but they did not feel that they were part of a committee to the point where they could tell other members of the committee what they were doing; that they were wearing another hat back at the office. In amongst those documents you will also see that SHFA had reached a very advanced stage in planning the relocation for this stack. It had run a design competition for the architecture and it had chosen the winner for a design to go on the Sega centre site, with the stack built within the building. That increased the present height of the stack from 65 metres to 80 metres, which raises a number of air quality concerns.

We have also placed some documents in there that we obtained from the Parliament that highlight some of the concerns that would need to be addressed had that relocation triggered a new environmental impact statement [EIS]. They have gone to a lot of trouble to ensure that whatever moves were taken they did not trigger such a new EIS. You will also note amongst the documents that NSW Health gave advice on 8 September supporting an 80-metre freestanding stack, or an 80-metre stack no higher than a 45-metre building. You will notice that the proposal from SHFA was an 80-metre stack in a 75-metre building, which would again have an effect on the way in which air moves around the bulk of the building.

You will see that the projections gave negative air quality impacts on residents at Millennium Tower and workers in the Darling Park building. Were any of them consulted? Those of us in the Ultimo community were not. On 5 August they received advice from consultants on urban design who stated they would suggest that leaving the stack where it currently was proposed was a better urban design solution. However, work still continued to be reallocated. The acoustical assessments in October and November 2003 stated:

During night time Millennium Tower is already at or above EPA recommended noise levels for residents located in an urban environment.

But they still continue to try to relocate the stack. You will also see in there some ministerial briefings which highlight the fact that the Roads and Traffic Authority received advice from Brett Walker, SC, that to have gone ahead with this plan as proposed by SHFA—the Roads and Traffic Authority referred to it as SHFA's plan to relocate the stack—would have triggered an EIS. The decision went to Cabinet and it was decided at that point in time that it would not happen. However, all the roads have been left open for it to happen in the future, which you will also see in the documents. I find it interesting that prior to that decision being made, which required a Cabinet level decision, Dr Rob Lang felt sufficiently confident to go to a Darling Harbour Businessmen's Association breakfast on 10 September—the final decision for this was not made until 12 January—and he told that Darling Harbour Businessmen's Association with some conviction, and in the presence of the Darling Harbour Businessmen's Association and the Lord Mayor that the stack would not be constructed in the current position.

So SHFA obviously thought it was very close to what was happening. Yet when it came to community meetings, just as it has told you in its submissions, it says, "That has nothing to do with us; that is the RTA and DIPNR." So we have some concerns about just which hat it is wearing at any point in time. We are just starting to follow the trail of another issue. As part of the cross-city tunnel we lost a direct walkway from Ultimo to the central business district, a route that takes us down to and wanders through the beauty of Darling Harbour. SHFA has continually told the community at meetings and in writing that this was an RTA decision and that it had nothing to do with it. I draw your attention to the item in the folder, a copy of the budget estimates committee hearing at Parliament House about 10 days ago, at which Mr Paul Forward, Director-General of the RTA told

that committee that it had reached a very amicable arrangement with SHFA over the relocation of that walkway.

You will see two references in that transcription to the fact that the RTA thought it was consulting with the right people, which seemed to be SHFA and not the local community that surrounds the walkway. Now that the decision has been taken the walkway has been lost, people are upset about this and they are writing letters. SHFA has now written to the RTA and said, "The community is not happy with this and you need to talk to them." Ten days ago Mr Forward told your budget estimates committee that he thought he had done that. For some reason he seemed to think that consulting with SHFA was sufficient, but he did not need to consult with the community. So we are not the only ones who are confused about which hat SHFA is wearing at different times. That is what I wanted you to understand.

CHAIR: The submission from UnitingCare Harris Community Centre, submission No. 12, states:

There is a general lack of trust of SHFA by the local community due to its position as a government body with a mandate for selling off land and making a profit from it, as well as from its many subsidiaries such as Darling Harbour. It is perceived that in many instances SHFA will compromise community needs in order to maximise profits.

Do you think that is a current assessment on the part of the community?

Ms THIRKETTLE: I think it is a strong perception. Its claim always is, "We have given all this open space and we have given the facility of land that the new aquatic centre has been built on." Yes it has, but it was public land in the beginning. These are basic infrastructure items. In all cases community action was involved. None of them happened in the original REP 26 that was put forward as being what Ultimo-Pyrmont would look for. Each of those open space gains and that aquatic centre have come about through community action.

CHAIR: Do you think that the change in chairmanship and the chief executive officer in more recent times have affected that perception?

Ms THIRKETTLE: No. I have been involved since the predecessor of the City West Development Corporation. I would have to say that there has been a similar attitude throughout the entire process, from then until today.

The Hon. GREG PEARCE: Thank you for your evidence.

CHAIR: Thank you very much for your submission.

(The witness withdrew)

JENNIFER ANNE WESTACOTT, Director-General, Department of Infrastructure, Planning and Natural Resources, 23-33 Bridge Street, Sydney, affirmed, and

GARY NOEL PRATTLEY, Deputy Director-General, Metropolitan Land and Resource Planning, Department of Infrastructure, Planning and Natural Resources, 23-33 Bridge Street, Sydney, sworn and affirmed:

CHAIR: Ms Westacott, No doubt you are appearing at the Committee's request in your capacity as Director-General of the Department of Infrastructure, Planning and Natural Resources?

Ms WESTACOTT: Correct.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Ms WESTACOTT: I am.

CHAIR: Mr Prattley, are you appearing in your capacity as Executive Director, Department of Infrastructure, Planning and Natural Resources?

Mr PRATTLEY: That is correct.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr PRATTLEY: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence that you wish to give or documents that you may wish to tender should be heard or seen only by the Committee, the Committee will consider your request. Ms Westacott, do you have an opening statement relating to the SHFA matter?

Ms WESTACOTT: Yes, I have just a short statement. Thank you for the opportunity to speak to you about my various roles in relation to the Sydney Harbour Foreshore Authority and the role of SHFA in administering the assessment process for a number of foreshore sites. I am a director of the SHFA board. Section 29 of the Sydney Harbour Foreshore Authority Act makes the Director-General of the Department of Urban Affairs and Planning a member of the board. That department, of course, has been incorporated into my department. All board members are appointed in a part-time capacity. As a board member I am not involved with the day-to-day running and management of SHFA. Under the Act that is clearly the responsibility of the chief executive officer of SHFA.

The board's role is to provide advice on policies and inform decisions taken by the chief executive officer. As Director-General of the Department of Infrastructure, Planning and Natural Resources, I have a broad strategic planning role in New South Wales and its statutory functions under the Environmental Planning and Assessment Act 1979. Preparation of the environmental planning instruments is one of my principal functions for which my department has responsibility under the Act. Our responsibility is to set the strategic context and planning controls in which SHFA operates. My role on the SHFA board is entirely consistent with my responsibilities as director-general. The Minister is the consent authority for all State significant development in the foreshore area under State environment planning policy [SEPP] 56, Sydney Harbour foreshores and tributaries, and environmental planning instruments prepared by my department.

SHFA processes development applications for State significant development identified in SEPP 56 as requiring the Minister's consent and provides recommendations to the Minister to assist him in reaching his determination. As well as these assessment functions, SHFA also prepares master plans for certain areas under the Sydney regional environmental plan [REP] No. 26 city west. I would like to clarify who exercises development consent functions on land covered by the Sydney Harbour Foreshore Authority Act. For matters of State significance the Minister is the consent authority. The Minister has delegated his consent authority to SHFA for minor development approvals only. Those

delegations were already in place for the Darling Harbour Authority and the Sydney Cove Redevelopment Authority.

To keep SHFA's assessment role in perspective, Committee members should note that the vast majority of development applications or modifications assessed by SHFA involve alterations to existing buildings and temporary displays and events. A very small proportion involves subdivision of land or the demolition of buildings. During my two years on the board, SHFA has dealt with just a few major development applications and only one involving its own land and, in these cases, it arranges for the proposal to be assessed independently. In the case of other major development proposals and master plans, SHFA seeks the advice of the Independent Design Review Panel for Sydney Harbour. The sites where SHFA assesses development applications or prepares master plans are the inner harbour, Ballast Point, Luna Park, land within the base precinct under REP 26, areas requiring master plans under REP 26, and land within the Walsh Bay conservation zone.

In administering planning controls for areas under its responsibility, SHFA has to comply with the usual exhibition and consultation provisions of the Environmental Planning and Assessment Act. SHFA has also put in place Government's arrangements to address situations where there may be an actual or perceived conflict of interest. The SHFA board does not make any recommendations to the Minister on the merit of development applications and master plans. It does, however, ensure that any referral of the assessment of development applications and master plans complies with due process before it is sent to the Minister for his determination.

SHFA has no role in preparing environmental planning instruments under the Act. I should emphasise that the master plans are not environmental planning instruments. I and my department continue to be responsible for the major planning instruments affecting places managed by SHFA. The Committee will have noted that the Minister, Minister Knowles, last week announced that he intends to return to the city of Sydney the management of the public domain and the consent role for development in the Ultimo-Pyrmont area. This approach is consistent with the Government's policy of withdrawing from detailed local planning and concentrating on strategic matters. My department has exhibited recently a draft regional environmental plan for Sydney Harbour for public comment and is working to respond to the public's comments on the draft plan and prepare a final plan for the Minister's consideration. The finalisation of the draft Sydney Harbour regional environmental plan and the accompanying development control plan will provide an improved and clearer planning framework and better environmental outcomes for Sydney Harbour and its catchment.

The draft harbour plan equally applies to the hydrological catchment of the harbour and detailed provisions for the waterways and immediate foreshores. It seeks to consolidate and replace three existing harbour instruments, SEPP 56, SREP 22, which is a regional environmental plan for the Parramatta River, and regional environmental plan No. 23 for Sydney and middle harbours. Once it is approved, the REP will provide planning co-ordination for the whole harbour and a consistent set of development rules. Another co-ordinating mechanism for the harbour is the Sydney Harbour executive that I chair which brings together 22 representatives from state agencies, local government and the Commonwealth. The executive provides a forum for many bodies that have responsibility for the harbour and a co-ordinating mechanism to help set and implement strategic policies and priorities for the harbour. I am happy to take your questions.

CHAIR: Thank you, Ms Westacott. Just firstly, earlier today we heard from the Auditor-General in relation to the Auditor-General's performance audit on and disposal of Sydney Harbour foreshore land, to which SHFA had put in its response, and SHFA suggested that the Auditor-General's report was valuable because its recommendations should become a catalyst for the new Department of Infrastructure, Planning and Natural Resources to be more action and results oriented than its predecessor. The former DUAP produced many quality reports and draft plans but failed to deliver results within specific target dates. Do you have a comment to make on that criticism of the situation up to the creation of DIPNR and what has happened since?

Ms WESTACOTT: One of the objectives of the creation of my department was firstly to bring together the land use, transport and natural resources matters that relate to the State as well as those matters that relate to Sydney Harbour. That will allow us, I think, to get a much better alignment between land use planning and natural resource management, particularly the management of such an important resource as Sydney Harbour. Since the Auditor-General's report we have, as I said, prepared

and exhibited and consolidated a regional environmental plan which brings together all those planning controls and that will see for the first time a consolidation into one single regional environmental plan all of the planning controls that relate to the harbour. So that, in a sense, it is much more action oriented to decision and planning than, I guess, some of the previous pure vision statements, although the Auditor-General's report does acknowledge how important they are and what a significant contribution they make.

CHAIR: What is the expected timetable for the approval of the REP?

Ms WESTACOTT: We exhibited last year and the exhibition closed on 6 August last year. We are finalising public comment that we received on the plan and it is currently with the Parliamentary Counsel and being finalised. Then it will go to the Minister for his approval.

The Hon. GREG PEARCE: Just to end a controversy on this Committee, would you say that the Sydney Harbour Foreshore Authority is a consent authority within the meaning of the Environmental Planning and Assessment Act, or not?

Ms WESTACOTT: No.

The Hon. GREG PEARCE: It is a delegate?

Ms WESTACOTT: That is correct.

The Hon. GREG PEARCE: But it does make determinations.

Ms WESTACOTT: It makes determinations that are delegated to it on minor matters but in respect of State significant matters under SEPP 56, that consent role remains with the Minister and SHFA provides assessment advice to the Minister and conditions of consent, but that role remains with the Minister.

The Hon. GREG PEARCE: So for people who have had some confusion about it, they do make determinations of consent on those delegated matters, but they are not a consent authority, as that is a defined term in the legislation.

Ms WESTACOTT: That is correct because those delegations can be removed, they can be varied, they can be changed for a particular site, so they are not a consent authority within the meaning of the Act.

The Hon. GREG PEARCE: I just wanted to ask you about the Superdome contract. Just before I go into some of the detail, I just want to understand how the Sydney Harbour Foreshore Authority approvals work under the Act, and particularly in relation to a purchase such as the Superdome. Under section 33, as I read it, the acquisition has to be approved by the Minister, namely your Minister, and receive concurrence from the Treasurer.

Ms WESTACOTT: That is as I understand it.

The Hon. GREG PEARCE: So do you recall in relation to the Superdome whether your Minister approved of that purchase?

Ms WESTACOTT: My understanding is that the chairman, Mr Gleeson, former chairman Gleeson, discussed it with Mr Knowles and also discussed it with the Treasurer. Minister Knowles did not express an objection to it but I think the principal source of discussion was with the Treasurer.

The Hon. GREG PEARCE: In your capacity as a director, did you participate in a meeting at which the tender was approved?

Ms WESTACOTT: No, I did not. I was not present at that board meeting.

The Hon. GREG PEARCE: So you did not participate in a decision?

Ms WESTACOTT: No.

The Hon. GREG PEARCE: Why was that?

Ms WESTACOTT: I was not available that day and I was not present at the board meeting.

The Hon. GREG PEARCE: Was it discussed at a board meeting two days prior to that meeting?

Ms WESTACOTT: There was a special—there were two meetings. There was the normal board meeting and a special meeting. I did not attend either of them.

The Hon. GREG PEARCE: You did not get to either of them. To your knowledge, when was the Minister, Minister Knowles, first advised of the proposal?

Ms WESTACOTT: I do not know.

The Hon. GREG PEARCE: When were you first advised of the proposal?

Ms WESTACOTT: I was aware of it from seeing the paper that was to be discussed at the board meeting that I did not attend. I cannot remember the date.

The Hon. GREG PEARCE: The board meeting was, I think, about 18 May 2004. You saw the presentation that was going forward to the board?

Ms WESTACOTT: I saw the paper, yes.

The Hon. GREG PEARCE: Did that include the business case, do you recall?

Ms WESTACOTT: Not to my recollection, no.

The Hon. GREG PEARCE: No, it did not include it, or, no, you do not recollect?

Ms WESTACOTT: I do not recall it including the business case, no.

The Hon. GREG PEARCE: Did you have a view on whether the proposal was in the interests of the Sydney Harbour Foreshore Authority or not?

Ms WESTACOTT: No.

The Hon. GREG PEARCE: As a director, you did not form any view at all?

Ms WESTACOTT: No.

The Hon. GREG PEARCE: Why would you not form a view?

Ms WESTACOTT: Well, I was not present at the meeting. I was not going to go to the meeting, and I did not think I had a—my recollection was of a short board paper. I did not have enough information to form a view and I had not been party to any of the discussions.

The Hon. GREG PEARCE: And as a director, that did not cause you to speak to Dr Lang or to the chair or someone to find out what was happening, as to whether it was in the interests of the authority—what the basis of its going forward was?

Ms WESTACOTT: No, I did not speak to Dr Lang about it. I was not going to be present at the meeting.

The Hon. GREG PEARCE: So, in terms of the way you perform your duties as a director of that authority, if you are not going to be present, you do not take any interest in what is happening?

Ms WESTACOTT: No, that is not true. I did not say that. I said I did not form an opinion based on the papers that were available to me and I did not discuss the matter with Dr Lang.

The Hon. GREG PEARCE: And he did not discuss it with your Minister?

Ms WESTACOTT: No, I did not.

The Hon. GREG PEARCE: Do you take or do you play any role in preparing any direction the Minister might give under section 28?

Ms WESTACOTT: In respect of what?

The Hon. GREG PEARCE: Of the Sydney Harbour Foreshore Authority Act?

Ms WESTACOTT: No, in respect of what matters?

The Hon. GREG PEARCE: Any matters.

Ms WESTACOTT: Could you give us an example?

The Hon. GREG PEARCE: One matter was the direction to withdraw the tender on the Superdome.

Ms WESTACOTT: Neither my department nor I provided any advice to the Minister in that respect.

The Hon. GREG PEARCE: Do you normally provide advice in relation to such directions, or not?

Ms WESTACOTT: The department provides to SHFA advice on planning matters. The department is one of the authorities that SHFA must consult with on certain matters. Prior to giving its recommendations to the Minister, the department would provide advice in that respect but the principal contact between SHFA and the Minister is with the chairman and chief executive officer.

The Hon. GREG PEARCE: I am sorry, I think you have got it around the wrong way. I was talking about directions that the Minister gives to SHFA. I would not have thought that SHFA would have been the adviser in relation to those directions.

Ms WESTACOTT: I see. I am sorry. I do not recall providing a great deal of advice on that matter. You would need to give me a specific example. Certainly in relation to that matter, the department did not provide advice to the Minister.

The Hon. GREG PEARCE: As a matter of advice though, do you normally provide advice to the Minister before he makes a direction? What form does that direction normally take? Is it formally written or is the Minister in the habit of making oral directions to the board of SHFA?

Ms WESTACOTT: You would have to put that question to the Minister.

The Hon. GREG PEARCE: You do not know?

Ms WESTACOTT: Well, that would be a matter for him. Sometimes it would be in writing. I simply do not know.

The Hon. GREG PEARCE: You are a director of the board of SHFA. Would such a direction come to the board of SHFA?

Ms WESTACOTT: Mostly those directions would come directly to the chair and the CEO and they would be tabled at board meetings.

The Hon. GREG PEARCE: Have you seen any of them tabled at board meetings?

Ms WESTACOTT: Pardon?

The Hon. GREG PEARCE: Have you seen any of them tabled at board meetings?

Ms WESTACOTT: In terms of a direction from the Minister?

The Hon. GREG PEARCE: Yes.

Ms WESTACOTT: Not that I recall. That is not to say that they did not come, but I do not recall any offhand.

The Hon. GREG PEARCE: Can I just ask you a little about last week's announcement in relation to returning Pyrmont planning powers? What is their time frame and the processes for doing that?

Ms WESTACOTT: There are two processes for doing that. We are in the process of assessing the new local environmental plan for the city of Sydney which will incorporate the Pyrmont-Ultimo area. That matter will need to go through Parliamentary Counsel and then the LEP can be made. In addition, the Government last year announced that it was going to make changes to what is called State significant State environmental planning policy which will also specify those matters to be retained by the State and those matters that will devolve to local government, and that State environmental planning policy will go before the Government shortly. So, in respect of the principal instrument that transfers those powers, which is the local environmental plan, that will be over the next three months subject to Parliamentary Counsel's advice on the instrument.

The Hon. GREG PEARCE: So the local environmental plan will cover, what area, do you know?

Ms WESTACOTT: Pyrmont-Ultimo. There are many things in the new LEP, but one of its functions is to bring Pyrmont-Ultimo into the city's planning and consent powers.

The Hon. GREG PEARCE: I am sorry, I forgot one question to you on the Superdome. I have an email here which was obtained under freedom of information. It is from Andrew Kelly at SHFA. I assume that you know Andrew Kelly?

Ms WESTACOTT: Yes.

The Hon. GREG PEARCE: It is dated Wednesday 19 May 2004 and it says that the subject is confidential, SHFA board paper and attachments. It is essentially an email describing the dispatch of papers to directors. It is from a fellow called Stuart Schram, which says, "Regrettably, I do not have access to Jennifer Westacott's email address. Staff in administration who normally arrange delivery of agendas have left for the day." It seems to indicate that the board papers were not sent to you.

Ms WESTACOTT: My recollection is that the board papers on the SuperDome were faxed to my office, but I do not recall seeing the business case.

The Hon. GREG PEARCE: This email had the business case with it, but you do not think you received an email.

Ms WESTACOTT: I do not recall seeing the business case. I recall seeing the covering board paper, but I do not recall seeing the detailed business case.

The Hon. GREG PEARCE: Would you mind checking your board papers for me to determine whether you did receive the business case? Would you take that on notice and let us know the circumstances of that? I find it quite curious that it occurred.

Ms WESTACOTT: Yes.

The Hon. DAVID OLDFIELD: Can you tell me how many DIPNR staff are on leave, other than normal annual leave? Is anyone on long-term, health-related leave or leave without pay, or anything similar.

Ms WESTACOTT: Can I ask what is the relevance of that question when this is an inquiry into the Sydney Harbour Foreshore Authority and not my department?

CHAIR: Can you frame it in the context of this inquiry, if not it could be a possible question for the further DIPNR estimates.

The Hon. DAVID OLDFIELD: I will leave it until then.

Ms SYLVIA HALE: I presume that the restored Pymont to be returned to the City of Sydney does not include the fish market site?

Ms WESTACOTT: No.

Ms SYLVIA HALE: I notice the media release states that the master plan approval opens opportunities. Was there much committee consultation in the preparation of this master plan?

Ms WESTACOTT: I am happy to give you that in detail and on notice. It is my recollection that a master plan was placed on public exhibition, and my recollection was that SHFA held two open days at the fish market, allowing people to look at the exhibited plan and provide comment on it.

Ms SYLVIA HALE: Some of the evidence that was given to the Committee last week indicated the degree of unhappiness with the level of consultation with other bodies, such as the Council of the City of Sydney, which believes it is often consulted at the end of a process rather than the beginning when it is too late to have any significant impact on outcome. What is your response to that?

Ms WESTACOTT: SHFA is required to consult as part of the Environmental Planning and Assessment Act. They are required to meet the requirements of consultation under the EP and A Act. All master plans that involve the city are sent to the City of Sydney for comment and review. I am not aware that, in relation to the fish market, the city felt that it was not adequately consulted. Certainly, the Central Sydney Planning Committee, that I also sit on, receives master plans on the Sydney Harbour Foreshore Authority and was given an opportunity to comment on them, and that is before they are referred to the Minister for approval.

Ms SYLVIA HALE: The point being made was not that they did not receive the master plan but that they received a semi-final version at a point too late in the process to have meaningful involvement in the preparation of those plans.

Ms WESTACOTT: I could not comment on that. I am not sure what officer level of discussions took place between SHFA officers and officers of the council.

Ms SYLVIA HALE: You would recognise also that that was the criticism made by the Auditor-General in his report on the disposal of Sydney land. He thought that the public ability to intervene in a planning process occurred so late that it foreclosed on many options.

Ms WESTACOTT: I won't go to the specific examples he cited in his report, but, as I said, they are required to consult as my department is required to consult and, as I said, I am not aware that the City of Sydney has major issues with the fish market master plan.

Ms SYLVIA HALE: In the media release for the restored Pymont return to the City of Sydney the Minister is quoted as saying that there is now nearly 14,000 people living in Pymont who enjoy a community with lots of open space. Would you agree that that is an accurate description of the amount of open space that is being made available to the committee in Pymont?

Ms WESTACOTT: One of the objectives of both the former City West and the Sydney Harbour Foreshore Authority has been to return foreshore access to the public. And, as you would be

aware, the recent announcement by the Government to redevelop the site at Darling Harbour is to see further public foreshore access made available to the community with 14 kilometres of unbroken access between the Anzac Bridge and Woolloomooloo. I believe that is a fair record of the open space that is being provided.

Ms SYLVIA HALE: The authority provided to the Committee two photographs, one showing the amount of open space in a Pyrmont-Ultimo area in about 1992 and another from 2004. Admittedly, the amount of open space seemed to have increased considerably, but what was significant was that much of that open space was located nowhere near the intense area for development. Dr Lang agreed that there was a discrepancy that the open space was not where the bulk of the people were actually living. He said, "That's not our responsibility. That's private enterprise." When asked who approved the development applications, the suggestion was that it was the Department of Planning that was responsible. Would you care to comment on the role of the Department of Planning in what many people see as a deplorable development in Pyrmont?

Ms WESTACOTT: I might ask Mr Prattley to comment on that because it precedes my arrival as the Director-General, but I would remind the Committee that all of the development in Pyrmont has been subject to the normal public processes within the Environmental Planning and Assessment Act in respect of the exhibition of master plans and development applications. But it precedes my time.

Mr PRATTLEY: It precedes my time, too, but I can say that I am familiar with the history of the site in my former capacity as Chief Executive, National Capital Planning Authority. I was adviser to Brian Howes, the Deputy Prime Minister on the Better Cities Program, so I am familiar with what that site was like before any development started there. It was a very degraded, industrial site with huge costs in terms of clean up and infrastructure provision. It would not have been possible to redevelop that site without a fairly intense form of development. In terms of the inner-city location of the site, it is critically important that we provide as many living and employment opportunities close to the city, within walking distance of the city, as possible. I do not accept your description of the site as a deplorable development

We can argue about the merits of some of the architecture, but there are many, many aspects of that site that are world class in terms of what it has achieved: an employment and resident mix close to the city and reclaiming the foreshore land for the public that had been denied access to the public for many years. The other point I would make is that apart from some of the public housing residents who were rehoused in that area most of the people who bought into that area are new residents who bought into that area in accordance with master plans that showed the intensity and extent of development, and the extent of open space, including sites like Elizabeth Macarthur Bay, which were shown as marked for development before people bought there. In many respects it is a situation of people getting the opportunity to live in those environments and then wanting to limit other people's opportunities, in my view.

Ms SYLVIA HALE: It is interesting that you mentioned the Better Cities Program because I am told that on 17 February in a statement during his city talk at the Town Hall the former Prime Minister said that Pyrmont represented a "lost opportunity". He said the intense high-rise development that has taken place contrasts with the low-rise village that was envisaged when the Commonwealth Government provided funds to build the light rail system under the Better Cities Program in the early 1990s. You say you had an involvement with the Better Cities Program. I suggest that the outcome, at least in Mr Keating's view, is very different to what was initially envisaged by the Commonwealth.

Mr PRATTLEY: I would have to say we both have different views about the outcome that was envisaged in that case. It was always intended to be an area of fairly intense redevelopment. I am not saying that some of the buildings are not higher than might have been envisaged at that stage, but I do not ever recall it being described as a low-development.

Ms SYLVIA HALE: In your capacity as both a director of the authority and Director-General of DIPNR, there were a number of questions a previous witness asked us to ask the authority, such as what sites in the Pyrmont-Ultimo area had been in the last five years, or are planned to be, the subject of sale by the authority, and sale includes a gift, long-term lease, et cetera. There are 16

questions and they are fairly detailed. Would you mind if I gave them to you so that you could have them answered?

Ms WESTACOTT: I will take them on notice and answer them for you.

Ms SYLVIA HALE: Do you agree that there is a public perception that the procedures by which the authority operates are fairly closed in that it is subject to direction from the Minister, in response to that it might develop a master plan, the master plan goes out for public comment but then the authority basically is responsible for making a recommendation to the Minister and that there is a public perception that although lip-service is given to public consultation the reality is that the authority does what the authority wants?

Ms WESTACOTT: I would disagree with that assertion. The authority has gone to great lengths to ensure transparency in their assessment functions. They have gone to great lengths to ensure that there is proper public consultation and certainly one of the functions of the board is to ensure that that public consultation or the comments that arise from it are factored into the advice that is provided to the Minister.

Ms SYLVIA HALE: Why do you suggest the authority was so opposed to retaining the former Water Police site as public open space rather than proceeding with its development, despite the fact it was zoned residential because, obviously, that could have been overcome? What justification do you see for that? What is the rationale for the Government now deciding to sell that site back to the city?

Ms WESTACOTT: The rationale for that original development was the zoning of the sites. The rationale for returning it to the city is obviously in response to the representations by the community to the Government about the site and the Government responded accordingly and the city has responded accordingly and the authority has responded accordingly. But the original development arises out of the long-term master plan for the site and the zoning for residential.

Ms SYLVIA HALE: But one might interpret the Government's decision to hand over the site to the fact there had been a major electoral rebuff to it at the local council elections when the public had an opportunity to voice its concerns in a meaningful way. Do you not consider that is part of the authority's role, not merely to say it is zoned residential therefore this must proceed, but to look at the overall impact upon the area, particularly when the photographs they have provided show us so little open space being available to the community?

Ms WESTACOTT: They certainly show more open space than was there in 1992.

Ms SYLVIA HALE: No-one disputes that.

Ms WESTACOTT: Dr Lang covered this in his evidence on Friday, that the authority has responsibility to balance commercial objectives with environmental objectives, and the decision on the former Water Police site is one of those decisions in response to the community's representations. The Government, the board and the city have agreed that that site would be transferred to the city.

Ms SYLVIA HALE: Do you consider that, at a site where the bulk of the development seems to have been of high-rise units, where very little open space is provided for those units, there is great reliance upon the provision of public open space, and that either the department, through its approval of varying development applications, or the authority, through its recommendation of varying applications, has singularly failed to meet the needs of that community, even on the visual evidence presented by the authority?

Ms WESTACOTT: I would contest that view. As Mr Prattley said, Pymont Ultimo development is a very successful development. We have 22,000 jobs. It is one of the most successful affordable housing schemes in Australia: 600 units of affordable housing provided, through levies and land sales, to people who otherwise would not have access to inner city accommodation; preservation of public housing in the precinct; the reactivation of the retail and commercial area along Harris Street; and, of course, the light rail. There would be many people who would argue that those achievements, as well as the additional open space that has been provided since 1992, represent very

good urban development and very good activation of a site, providing much-needed residential accommodation in excellent proximity to the CBD.

Ms SYLVIA HALE: Could I turn briefly to Luna Park. An expert committee was set up to determine appropriate planning controls for the cliff top at Luna Park. That was a four-member expert panel. Were you aware that there were two dissenting opinions from the report that was published and put forward to be the opinion of the committee?

Ms WESTACOTT: I do not believe they were dissenting as in they were minority reports. Certainly, in one case, Mr Thalís¹ offered some suggestions on an alternative use of the site, which basically revolved around the intensification of one parcel and no development on the other; and the mayor of North Sydney has written to the Minister and the department giving her views, but in that letter, which I am sure you have, she also makes it clear that she is willing to agree with the basic tenets of the report. So, whilst it is true that two committee members had suggestions and alternative views about the scale of the development, I think it is not true to say they dissented from the panel.

Ms SYLVIA HALE: I am not sure of the procedure, and I would seek the Chair's indulgence, but I have a series of some nine questions about Luna Park. Given the lateness of the hour, may I give you a copy of those written questions and ask you to take them on notice?

Ms WESTACOTT: Certainly.

CHAIR: That is fine.

The Hon. JAN BURNSWOODS: Madam Chair, if it would help Ms Hale, we do not have any questions at this stage, so why doesn't she go ahead and ask them?

CHAIR: Mr Pearce?

The Hon. GREG PEARCE: Ms Westacott, was it the original proposition that the cross-city tunnel stack be approved in the site in which it was approved, and that it then be relocated to another site?

Ms WESTACOTT: My recollection—and I will have to confirm this to the Committee—is that the original consent made provision that the stack could be relocated. It is my recollection that it did not compel the stack to be relocated; it gave an option of relocating the stack, but it did not, as a condition of consent, compel that it be relocated.

The Hon. GREG PEARCE: That seems to be in accord with the information that I have. Was it the department's position that the stack should be relocated?

Ms WESTACOTT: I think our view was that it was a matter for the RTA to determine and, as I said, given the flexibility of conditions of consent, that it could be relocated should the RTA wish to relocate it. My recollection is that I do not believe the department had a particularly strong view that it should be relocated.

The Hon. GREG PEARCE: Did SHFA have a view on the current location?

Ms WESTACOTT: Certainly, SHFA had a view that it ought to be relocated.

The Hon. GREG PEARCE: What was the basis of that view?

Ms WESTACOTT: My recollection—and I need to take this on notice and make sure that I represent SHFA's views correctly here—is that they believed, from an amenity point of view and a physical appearance point of view, that there could be a better urban outcome if it were relocated. But,

¹ In correspondence regarding amendments to the transcript of Monday 21 February 2005, Ms Westacott stated "...I inadvertently attributed the views of the Mayor of North Sydney, Councillor mcCaffery to Mr Thallis."

again, this was a condition that we put in and left it open for people to come back and seek to vary the consent.

The Hon. GREG PEARCE: Do you recall whether it was discussed at the SHFA board level?

Ms WESTACOTT: Yes, it was discussed at the SHFA board level.

The Hon. GREG PEARCE: What was the nature of that discussion, do you recall? It is a fairly major project within one of your areas.

Ms WESTACOTT: Yes. Certainly, the pros and cons of a view to seek relocation was discussed, in respect of the timetable for the cross-city tunnel and the complexity of that relocation. It was agreed, I think, to approach the RTA and seek relocation. Ultimately, through discussions, it was agreed not to proceed with the relocation.

The Hon. GREG PEARCE: Did your department do any work in terms of the requirement for an EIS if the stack was to be removed?

Ms WESTACOTT: I would have to take that on notice. Certainly, the department gave advice about the manner in which that would need to be assessed. I am not sure that it required an EIS, and I will take that on notice.

The Hon. GREG PEARCE: Would you expand that to include whether the department considered special legislation as an alternative as well?

Ms WESTACOTT: I do not recall that special legislation was ever considered. Certainly, my recollection is that the department gave advice about the matters that would need to be addressed in the variation to the conditions of consent to relocate the stack. I am not sure though, from recollection, whether it was a formal environmental impact statement that was required, but I will take that on notice. I certainly do not recall legislation being discussed.

The Hon. GREG PEARCE: In your role as a director of the authority, do you recall an initiative for a street lighting policy for The Rocks which involved Goldspar multifunction poles?

Ms WESTACOTT: I recall the lighting policy was tabled to the board for information. I do not remember the specifics in respect of the types of poles that were discussed.

The Hon. GREG PEARCE: What is your understanding of the current status of the Cooks Cove project?

Ms WESTACOTT: I will ask Mr Prattley to deal with this in more detail. The current status is that both the master plan and the regional environmental plan have been approved, and it is my understanding that one of the owners, the Kogarah Golf Club, is not ready to proceed. So, until that club is ready to proceed, the matter is on hold.

Mr PRATTLEY: There is nothing I can add. Our involvement was in the approval of the master plan and the preparation of the regional environmental plan. I think it is pending Kogarah Golf Club reaching satisfactory commercial arrangements with another party.

The Hon. GREG PEARCE: So there is no contractual arrangement with the department and Kogarah Golf Club?

Ms WESTACOTT: No.

Mr PRATTLEY: No.

The Hon. GREG PEARCE: What arrangements are in place between SHFA and the golf club?

Ms WESTACOTT: SHFA is the project manager, but it does not have either a consent role, which will fall to Rockdale Council, or an ownership role in Cooks Cove. It is the project manager.

The Hon. GREG PEARCE: When you say it is on hold because the Kogarah Golf Club is not ready to proceed, what is your understanding of the circumstances?

Mr PRATTLEY: The regional environmental plan and the master plan are approved, so it could proceed to a development application stage at any point that the parties are ready to lodge one.

The Hon. GREG PEARCE: That does not necessarily have to be a development application for the entire project. I am wondering why SHFA has not proceeded with any of the other elements of the project. Or is it so integrated that it cannot be done that way?

Mr PRATTLEY: It is a totally integrated project.

Ms WESTACOTT: That particular part of the development is central to many other things being able to occur, so I would imagine that, from a kind of efficiency point of view, not proceeding with that aspect of the development would make the rest of the development very difficult.

The Hon. GREG PEARCE: In relation to the Water Police site, what is the ownership structure of that site at the moment? I would ask you to put your SHFA hat back on.

Ms WESTACOTT: I will have to take this on notice to make sure I have the details correct. At the moment, it is owned by the authority, or by shareholders of the authority, effectively the Treasurer and the Minister, and it is in the process of finalisation of negotiations to transfer it to the city.

The Hon. GREG PEARCE: Does the authority own land in its own right, or is that always through the shareholders?

Ms WESTACOTT: I will take that on notice.

The Hon. GREG PEARCE: Do you know what is the process for disposing of land such as the Water Police site?

Ms WESTACOTT: I think the chief executive went through that on Friday, and I am happy to give the Committee on notice the current detailed arrangements for disposal, because, as you know, there are core and non-core lands. Under the legislation core lands cannot be disposed of at all, even with the consent of the Minister. Non-core lands can be disposed of, and I will table for the Committee the exact process by which land can be disposed of.

The Hon. GREG PEARCE: Does disposal come up to the board as a matter for decision?

Ms WESTACOTT: Yes.

The Hon. GREG PEARCE: What is the probity process when it comes up to the board for decision?

Ms WESTACOTT: In what sense do you mean probity process?

The Hon. GREG PEARCE: What does the board require to agree to dispose of or to recommend disposal of land?

Ms WESTACOTT: There is a policy on the disposal of land. The board requires that proper decision-making processes be gone through by the staff in respect of why certain lands are considered to be surplus; and that proper evaluation has taken place; and, obviously, that development consent is obtained from the shareholding Minister.

The Hon. GREG PEARCE: Are there board committees?

Ms WESTACOTT: As in subcommittees of the board?

The Hon. GREG PEARCE: Yes—other than audit and risk.

Ms WESTACOTT: No. There is only the audit and risk management committee.

The Hon. GREG PEARCE: So the board really makes its decisions based just on submissions from the CEO. Is that normally the way it works?

Ms WESTACOTT: Like all boards, it makes its decisions based on advice from management, as well as in accordance with its obligations under legislation, and as well as people's obvious knowledge of their fiduciary duties, et cetera. But, like all boards, it takes advice from management.

The Hon. GREG PEARCE: To what extent does the board oversee the leasing portfolio?

Ms WESTACOTT: In what sense?

The Hon. GREG PEARCE: What oversight do you have of the leasing portfolio of major tenancies and minor tenancies?

Ms WESTACOTT: Major tenancies come before the board for endorsement. The board monitors vacant properties and properties where leases are being negotiated. The board monitors, and gives consent to, both reviews and restatements of leasing arrangements.

CHAIR: What is the definition of a major tenancy?

Ms WESTACOTT: My recollection is that most tenancies come before the board. I imagine, though, that minor leasing arrangements are handled by management, in terms of negotiating rent levels and things like that. So major tenancies would be major buildings, major commercial operators. Certainly, all renewals come to the board for endorsement. But there are minor matters that management negotiates directly, in terms of maintenance and things like that, and those matters do not come to the board.

The Hon. GREG PEARCE: In relation to the Mercantile hotel, what is your understanding of the current status and the history of that tender?

Ms WESTACOTT: I think Dr Lang handled this in his evidence on Friday.

The Hon. GREG PEARCE: Yes. But I was asking you for your understanding of the position.

Ms WESTACOTT: My recollection is that the matter came to the board for renewal. There were some discussions about addressing some maintenance issues with the property. There was discussion about whether or not the lease should be the subject of competition, and the board elected to go down a more competitive path than simply to renew the lease.

The Hon. GREG PEARCE: What was the basis on which the board made that election?

Ms WESTACOTT: On two principal issues: one, that the proponent was seeking a very long-term lease, and it was felt that it needed to be properly market tested, not just looking at valuations but actually tested in the marketplace, so that there was competition and an opportunity for people to gain access to that site; and, secondly, some outstanding maintenance matters in respect of the site.

The Hon. GREG PEARCE: There has been some discussion of the enhanced approval powers given to SHFA in August 2003. Would you explain exactly what that means?

Ms WESTACOTT: In August 2003 a number of functions were transferred from myself to the chief executive of SHFA. These were major development applications for State significant

development under State environmental planning policy [SEPP] 56. Preparation and assessment of master plans and the Minister's determination for minor DAs that had previously not been covered in the SHFA boundary but those minor matters had previously been covered in the Darling Harbour Authority's delegations.

The assessment function for major DAs relates to State significant matters under SEPP 56. A decision to transfer those functions was to allow my department to concentrate on strategic matters consistent with the Government's broader direction that my department should concentrate on the plan making function rather than on the development assessment function. As I said, they have only dealt with a small number of major development applications as part of that transfer. In those cases they have also sought advice from an independent design review panel and where they have financial interest in the site they actually have an independent assessment. They took advice from Deloitte about how to ensure that that assessment function was done in accordance with full probity and transparency. The function is a trial basis and as you know the Minister, as we have discussed this afternoon, has transferred those functions back to the city. It is critical, of course, to restate that it is not a consent function, it is an assessment function in respect to State significant matters and in respect of having any determination functions those relate to minor development applications only.

The Hon. DAVID OLDFIELD: One of the submissions that we have suggest that SHFA is overstating the amount of open space quite substantially. Are you familiar with that allegation at all?

Ms WESTACOTT: No.

The Hon. DAVID OLDFIELD: In particular, there is a claim that Saint Bartholomew's Park is less than half the size claimed by SHFA. Would you comment on that?

Ms WESTACOTT: I cannot comment on that. I am happy to take it on notice.

The Hon. DAVID OLDFIELD: Yes and also in relation to an area nearby McCreehy Reserve which also is said to be greatly overstated. The general thrust of the allegation, if I can call it that, is rather than being 19.8 square metres of open space per person, it is more like 11 square metres. Could you take that question on notice?

Ms WESTACOTT: I will take it on notice.

Ms SYLVIA HALE: How is open space calculated and whether it takes into account footpaths, thoroughfares, commercial plazas, roads and those types of things? There seems to be some considerable discrepancy as to how it is calculated.

Mr PRATTLE: Normally open space would not include roads but it would certainly include paths, plazas and open space areas. I think the only time I would consider including footpaths as open space is where they are along waterfronts or boardwalks. Open space comes in many guises from very natural areas to very intensely used areas.

The Hon. DAVID OLDFIELD: And many disguises!

Ms SYLVIA HALE: On Friday Dr Lang was quite adamant that they used the definition obtained in the Act when calculating open space. Would you confirm that?

Ms WESTACOTT: Yes.

Ms SYLVIA HALE: I understand that the proposal that the authority is in fact the agent of the Cooks Cove Development Corporation. Is that corporation a Crown or statutory body?

Mr PRATTLE: Yes, it is a corporation set up under the growth centres Act.

Ms SYLVIA HALE: I understand that under the Registered Clubs Act there are restrictions upon registered clubs being able to dispose of land. In fact, they cannot lease land for longer than three years. I believe in Cooks Cove the proposal is to swap or transfer land from the golf club, or at

least to relocate it. How will that be done given the restrictions on the sale or lease of land owned by registered clubs?

Mr PRATTLEY: I would have to take that on notice. I am not sure of the details of that part of the transaction. Certainly a rearrangement of the land was proposed, yes.

Ms SYLVIA HALE: Would you take that on notice and also indicate whether the fact that it might be transferred to a statutory body would provide any exemption from the Act?

Mr PRATTLEY: Yes.

The Hon. JAN BURNSWOODS: Earlier I spoke to the Clerk. Ms Sylvia Hale asked Ms Westacott to take some questions on notice that had been given by some witnesses. In fact, nine of them on the first page quite specifically requests SHFA to demonstrate probity and seven on the second page are either very specifically or in general for SHFA. Did you see these questions before you offered to answer them?

Ms WESTACOTT: That is correct.

The Hon. JAN BURNSWOODS: I am concerned that a lot of the questions that the witness has agreed to get back to us on are actually questions for SHFA. As you know, this morning the committee has agreed to bring back SHFA and to invite Mr Robertson. I am concerned that a whole lot of questions are inappropriately being delivered to this witness which really should go to SHFA. I think they are inappropriate for this witness and the DIPNR.

Ms SYLVIA HALE: I addressed them to the witness in her capacity as a director of SHFA as well as being the Director-General of DIPNR.

The Hon. JAN BURNSWOODS: As a member of boards and knowing board processes I do not think it is appropriate for us to ask one member of a board to reply without reference to and approval by the board. It seems that we should simply redirect these questions to SHFA. We have agreed that SHFA should come back and give further evidence.

Ms SYLVIA HALE: I am more than happy for Ms Westacott to forward them to SHFA if she thinks that is appropriate or for a duplicate copy to be sent to SHFA.

CHAIR: Ms Westacott if some of them are relevant in relation to your being the Director-General of DIPNR then obviously you will respond to them. Otherwise, we are happy to direct them to SHFA.

Ms WESTACOTT: I think the questions on Luna Park are questions that we should answer and I will answer those for you. On the probity with respect to the Water Police site and in respect to the disposal of public assets they are more appropriately dealt with by SHFA itself.

(The witnesses withdrew)

(The Committee adjourned at 5.08 p.m.)